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ABSTRACT

Law school admission of minorities, and in particular Hispanics, is addressed, based on results of a study of California law schools and analyses of current trends and alternative admission and testing approaches. Information obtained on current admissions procedures in American Bar Association-approved California law schools led to the conclusion that minority enrollment, especially Hispanic enrollment, will not likely increase. This conclusion rests on the findings that admissions decisions, for the most part, are based on GPA/LSAT scores: it is suggested that minority applicants tend to have lower GPA/LSAT scores than their white peers. Additionally, the issues involved in professional school admissions are examined, and constitutional means for facilitating minority access to professions from which certain groups have been historically underrepresented or even excluded are explored. Alternative admissions standards and a model bar review program are proposed. The Bakke decision, issues relating to testing and psychometrics, sociological and historical perspectives on minority access to higher education, demographic data, and retentive and supportive systems for special admittees are considered. (SW)

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LAW SCHOOL ADMISSIONS STUDY

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The Mexican American Legal Defense and Educational Fund is a nonprofit organization dedicated to securing the civil rights of Mexican Americans through legal action and legal education.

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The Mexican American Legal Defense and Educational Fund has long considered education and educational access for minorities a major priority. Especially at the graduate and professional school level, the time is overdue for Hispanics and other racial/ethnic minorities to participate more fully. Due to the acknowledged under-representation of racial/ethnic minorities in the legal profession, the Fund for the Improvement of Postsecondary Education (FIPSE) provided MALDEF with a grant to study admissions procedures in American Bar Association-approved law schools in California and to generate alternative admissions criteria which might facilitate minority access to law school and the legal profession.

We are deeply appreciative of FIPSE's support and direction, as well as the significant contributions of outside consultants. Of particular assistance were the research endeavors of Dr. William Sedlacek of the University of Maryland and Professor Jeffrey Kupers of the University of San Francisco School of Law. Also, we express deep gratitude to Professor Ronald Kennedy of Northwestern University School of Law, Professor Haywood Burns of the Urban Legal Studies Program of City College of New York, Mr. Dario O. Prieto of the Association of American Medical Colleges, Mr. David White in conjunction with the National Conference of Black Lawyers, Dr. Celestino Fernandez of the University of Arizona, and Dr. Richard Drogin of California State University at Hayward.

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report. The Advisory Committee is as follows:

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I

INTRODUCTION

The decision by the United States Supreme Court in *The Regents of the University of California* v. *Bakke*[1] focused the attention of the public in general and universities in particular on the policies and mechanics which govern admissions procedures in institutions of higher learning. In 1974 Marco DeFunis presented many of the same issues to the Supreme Court, but the majority of the Justices declined to reach the merits of the case due to mootness.[2] In *Bakke* the Court rendered an exhaustive series of opinions and dissents which, though failing to offer a simple solution to the admissions conundrum, furnished some constitutional guidelines on admissions.[3]

Bakke has been simultaneously hailed and maligned both by those who support affirmative action in admissions and those who favor traditional admissions formulae.[4] Certainly the decision provides ample ammunition to fortify the preexisting viewpoints of those who assert that meaningful integration, especially in the professions, will not occur in the near future without a modification in admissions procedures as well as those who lament the movement away from pure meritocracy in admissions and the perceived decline in traditional standards.

1. 438 U.S. 265 (1978).

2. DeFunis v. Odegaard, 416 U.S. 312 (1974). In 1970, the University of Washington Law School rejected the application of the plaintiff Marco DeFunis, a white male, Jewish student whose grades and test scores rated as high or higher than those of minority applicants who had been offered admission to the school. The plaintiff challenged the constitutionality of the school's admissions policy whereby minority applications were considered separately and by less stringent criteria. Contending that the school's policy discriminated against him on account of race in violation of the fourteenth amendment, the plaintiff sought a mandatory injunction to compel his admission. The trial court granted the requested relief but the Supreme Court of Washington reversed the lower court's judgment, upholding the constitutionality of the school's admission procedures. When the case reached the U.S. Supreme Court on writ of certiorari, DeFunis needed only one more quarter to complete law school. On that basis, in a per curiam opinion expressing the view of five Justices, the Court refused to hear the merits and held that the case was moot under the case or controversy requirement of Article III of the Constitution. Justices Douglas, Brennan, White, and Marshall dissented.

3. There were six separate opinions filed by the Justices of the Court. Justice Powell's opinion on both the issue of the constitutionality of taking race into account in admissions and that of quotas became the pivotal vote. Therefore, the diversity guidelines suggested by Justice Powell, though lacking Court unanimity, have been analyzed and relied on by many educational institutions in their attempts to reshape and formulate their own admissions criteria post-*Bakke*.

4. The day after the *Bakke* decision was made public, the *New York Times* printed, "among the entire spectrum of people and groups with a stake in the *Bakke* decision, there were degrees of satisfaction and relief today." Allan Bakke was reportedly pleased with the decision and planned to begin his medical education in September, 1978. A representative of the Anti Defamation League of the B'nai B'rith expressed satisfaction that use of racial quotas, as implemented at Davis, was held to be unconstitutional. At the same time, Attorney General Griffin Bell said, "it was a great gain for affirmative action." Civil rights leaders hailed the complex decision's affirmation of the use of race as a criterion and educators expressed relief that most university admissions programs could continue unchanged. Some statements by minority leaders indicated a fear that Bakke's admittance would encourage a retrenchment in efforts to implement or broaden affirmative action admissions programs, but most civil rights leaders and educators emphasized the Court's holding that race was indeed a constitutionally permissible criterion in admissions. Linda Greenhouse, *New York Times*, 29 July 1979.

Regardless of one's orientation toward admissions, the *Bakke* decision offers an opportunity to examine carefully the issues involved in admissions from legal, historical, psychometric, and demographic perspectives.[5] Moreover, the opinion provides constitutional approbation and guidelines for universities to facilitate access to those who historically have not enjoyed equal participation in institutions of higher learning and the professions.[6] Thus, the Mexican American Legal Defense and Educational Fund (MALDEF), under the aegis of the Fund for the Improvement of Postsecondary Education, has completed a twelve-month study of different aspects of the admissions controversy.[7]

No contention is made that the suggestions offered in the report represent a panacea to the difficult process of selective admissions in higher education in a pluralistic and economically diverse society. But the report does serve to illuminate the issues involved in professional school admissions, to explore constitutional means for facilitating minority access to professions from which certain groups have been historically underrepresented or even excluded, and to posit concrete alternative admissions standards which may be seriously studied by different schools and selectively incorporated into each school's admissions procedures—all in keeping with the unique character of each individual institution.

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5. For a comprehensive discussion of the complex policy issues involved in professional school admissions, see *Selective Admissions in Higher Education*: The Carnegie Council on Policy Studies in Higher Education (San Francisco: Jossey-Bass, Inc., 1977).

6. See Sweatt v. Painter, 339 U.S. 629 (1950); Thompson, "Curbing the Black Physician Manpower Shortage," 49 J. Med. Educ. 97 (1974); Romero, Delgado, and Reynoso, "The Legal Education of Chicano Students: A Study in Mutual Accommodation and Cultural Conflict," 5 New Mex. L. Rev. 177 (1975); Pinderhughes, "Increasing Minority Group Students in Law Schools: The Rationale and the Critical Issues," 20 Buffalo L. Rev. 447 (1971). For cases documenting the laborious struggle for minority groups to achieve equal educational opportunity, see *inter alia*, Brown v. Board of Educ. of Topeka, 347 U.S. 483 (1954) (holding that the "separate but equal" doctrine has no place in public education and that segregated educational facilities are inherently unequal and in violation of the equal protection clause of the fourteenth amendment); Crawford v. Board of Educ. of City of Los Angeles, 17 Cal. 3d 280 (1976) (holding that California school boards bear a constitutional obligation pursuant to Cal. Const. art. I, § 7 to take reasonably feasible steps to alleviate school segregation); Keyes v. School District No. One, Denver, 413 U.S. 189 (1973) (holding that schools with a combined predominance of Blacks and Hispanics should be included in the category of segregated schools since these groups suffer identical discrimination in treatment when compared with the treatment afforded white students); Lau v. Nichols, 414 U.S. 563 (1974) (holding that failure of the San Francisco school system to provide English language instruction or other adequate instructional procedures to non-English-speaking Chinese students denies them a meaningful opportunity to participate in the public educational program in violation of the Civil Rights Act of 1964, § 601); Larry P. v. Riles, ____ F. Supp. ____ (N.D. Cal. 1979) (holding that racial imbalance in the composition of classes for the educable mentally retarded warranted the issuance of an injunction as to future testing and reevaluations where IQ test scores are the most important factor in making assignments to such classes).

"Thus, affirmative action for Blacks, other minorities, and women has in fact a clear psychometric rationale as well as a moral, sociological, and political one. Fifty years ago, Black college graduates had as major career options service in the U.S. Post Office and the Brotherhood of Sleeping Car Porters." Sylvia T. Johnson, *The Measurement Mystique*, Howard University, Institute for the Study of Educational Policy Occasional Paper no. 02 (Washington, D.C., 1979), p. 47.

7. The Mexican American Legal Defense and Educational Fund is a national advocacy organization. Under the able leadership of its President and General Counsel Vilma S. Martinez, MALDEF has a 1.9 million dollar annual operating budget, maintains offices in San Francisco (headquarters), Los Angeles, Denver, San Antonio, and Washington, D.C., and has become a major resource articulating the needs of Mexican Americans, the second largest minority in the United States. In addition to civil rights litigation, MALDEF also administers educational programs for promising and deserving Mexican American and Hispanic law students, community education, and research and policy analysis programs.

Moreover, the report that follows presents workable alternative admissions criteria. It further analyzes and addresses constitutional questions, issues relating to testing and psychometrics, sociological and historical perspectives on minority access to higher education, demographic data, and retentive and supportive systems for special admittees. Sources of information include not only traditional bibliographical material, but also data and studies released to MALDEF through the cooperation and support of numerous individuals and institutions of higher education. MALDEF is particularly grateful for the assistance of these persons and schools, as well as our eminent Advisory Committee, without whose cooperation the study would have been impossible.

Whether explicit or implicit, a policy decision is inherent in every admissions plan.[8] The text that follows examines the salient policy issues in admissions with the hope of assisting law schools, post-*Bakke*, to delineate clearly and to implement effectively admissions criteria consistent with the goals and objectives of each school. It is further hoped that the proffered suggestions will assist law schools in an equitable and pluralistic allocation of the scarce resource of first-year placement in law school which leads to subsequent entry into the legal profession.

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8. Policy decisions address problems which are complex and ill-defined because they involve divergent interests that do not have objective solutions, but rather require resolution based on political judgment. See also, E.S. Quade, "Analysis and Public Decisions," *Analysis for Public Decisions* (New York: Elsevier Press, 1975), pp. 1-11.

"Today, with other social priorities, there is again uneasiness about school sorting that shapes life chances. But philosophical issues remain unvoiced. . . . Society needs to think once again about the kind of equality it would prefer and about the desired relation between productivity, social status, and standard of living. Most of all, it needs to distinguish between education as preparation for service to society, education as preparation to get more out of living, and education as a means of certifying social status." Lee J. Cronbach, "Five Decades of Public Controversy Over Mental Testing," *System of Multicultural Pluralistic Assessment* (Riverside: University of California, 1977-1978); reprint from *American Psychologist* (January 1974), pp. 15-41.

Kenneth B. Tollett observes in the foreward to Sylvia T. Johnson's work, "Of the many important and striking observations made by Dr. Johnson in her paper, it is very noteworthy that she states, 'The choice of a criterion of interest is . . . fundamentally a policy decision, and not a psychometric one.' Thus, are we interested in instruments which will predict the first or second year performance in medical or law school or do we want instruments which will predict what kind of doctor of lawyer an applicant will become, showing how much interest in and commitment to a particular clientele? Furthermore, the gross underrepresentation of Blacks, Chicanos, and females in the professions is not irrelevant to the admissions process. Therefore, as Dr. Johnson writes, 'If decision makers feel that it is useful and important to have fair numbers of Black and female physicians, then a utility function would give weight to the minority or sex status of applicants' " Johnson, *The Measurement Myttique*, p. vii.

II

DIMENSIONS OF ADMISSIONS ISSUE

A. INCREASED DEMAND FOR ADMISSIONS IN THE LATE 1960s

Minority students began seeking entry to professional schools in meaningful numbers in the late 1960s and early 1970s.[1] The surge in minority interest in the professions was due in great part to the expanded opportunities for minority persons as a result of the enactment of the Civil Rights Act of 1964 and, subsequently, the promulgation of Executive Order 11246.[2] Minority applicants' newly acquired civil rights, including the possibility of entering formerly white bastions such as law and medicine, coincided squarely with an unprecedented demand for professional and graduate admissions.

The unequaled interest in law school is documented by Law School Admission Council research:

> For example, 50,793 persons took the LSAT in 1967-68. In 1971-72 the corresponding number was 121,871, an increase of 140% in four years. Over the same period of time, however, the number of first year law students increased by only 47%, from 25,746 in 1967-68 to 37,742 in 1971-72.[3]

With the increase in the absolute number of applicants came a concomitant escalation in the standards required to gain admittance to law school. The Wigmore philosophy of finding out who can become a competent lawyer by allowing everyone the opportunity to attend law school exists only in anecdotes of the past.[4] For example, one director of admission recounts:

1. For an excellent general discussion of the initial experiences of minority students and schools during the first significant influx of nonmajority persons into law schools, see Symposium, 1970 U. Tol. L. Rev. 277-986 (Spring-Summer 1970); see also, U.S., Commission on Civil Rights, *Toward Educational Opportunity: Affirmative Admissions Programs at Law and Medical Schools*, Clearinghouse Publication 55, June 1978, pp. 1-48.

2. 42 U.S.C. § 2000d (1974); 3 C.F.R. §§ 339-348 (1964-1965 Comp.).

3. Robert Linn, "Test Bias and the Prediction of Grades in Law School," *Reports of LSAC Sponsored Research*, 3 vols. (Princeton, N.J.: Law School Admission Council, 1977), 3 (1975-1977): 3; reprint from 27 J. Legal Educ. 293-323 (1975).

4. Wigmore's premise that the best way to determine competence to study law is to see what a "boy" can do during his first year of legal studies is based largely on his mistrust of the Ferson-Stoddard Law Aptitude examination (precursor of the LSAT) which he concluded had no practical value in predicting the ultimate capacity of an individual to study law. Wigmore's concern was for accurate prediction for the individual. At page 455 he states: "What is not to be encouraged is the premature acceptance of any particular test as dependable. . . . Faith in any particular test ought to wait a lengthy process of verification. We cannot afford to be too sanguine. The human mind is almost infinite in its variable individualism. The variant factors are numerous and often untraceable." John H. Wigmore, "Juristic Psychopoyemetrology—Or How to Find Out Whether a Boy has the Makings of a Lawyer," 24 Ill. L. Rev. 454, 455, 463-464 (1929).

In *DeFunis v. Odegaard* Justice Douglas echoes similar concern that existing institutional admissions criteria operate to exclude individuals, particularly minorities, from professional schools. At page 328, he observes: "The answers the student can give to multiple-choice questions are limited by the creativity and intelligence of the test-maker. . . . If he [the test taker] is strong-minded, nonconformist, unusual, original, or creative—as so many of the truly important people are—he must stifle his impulses and conform as best he can to the norms that the multiple-choice testers set up." "The tests," Justice Douglas continues at page 329, "do not have the value that their deceptively precise scoring system suggests. . . . There are many

> A few short decades ago my predecessors in admissions at Yale Law School had to scramble annually to get enough live bodies to fill the seats available. The admissions task was simply to determine if an individual applicant possessed the necessary academic credentials to get by. Drumming up enough interest in the law was the problem. Stories are legion about latecomers getting into law school by appearing at the door at registration time with the requisite fee. One such case was a young man named Byron White. We know him today as an Associate Justice of the United States Supreme Court. Justice White, at an alumni meeting a few years ago, delighted in telling of the casualness with which he was admitted late. Today no such casual late admissions could occur.[5]

Even within the past decade, which corresponds to the first efforts of minority applicants to gain entrance to professional schools in more than token numbers, the absolute increase in applicant numbers and the corresponding escalation in required credentials effectively negates any thought of admitting the majority of qualified applicants, much less of allowing every applicant an opportuniry to test his or her potential for practicing law. At the University of California at Berkeley, School of Law, the increase in cognitive indices (LSAT and GPA) required for admission has been as follows:

> Until 1961 the Boalt Hall Law School automatically admitted any college graduate with a B average. The LSAT was required only for those with less than a B. . . . And in those days a score of 500 was enough for admission. According to a brief filed by Deans of several law schools, [in *Regents of the University of California* v. *Bakke*] in 1960, 708 persons applied to Boalt and 517 were admitted. In the fall of that year, 268, or 53 percent of those admitted, enrolled in the first year class.
>
> The post-war boom of babies impacted on admissions in the 1960's, and applications rose sharply. In 1966, 1,500 applied for 278 places at Boalt Hall. In 1972, 5,000 applied and 271 were enrolled—5 percent of all applicants. The LSAT was now required of all applicants, and the median scores were 638 in 1967 and 712 in 1976. The grade point average of entering law students in 1976 was 3.66. "It is quite clear," said the law school deans, "that the level of record achievement required to gain admission to Boalt Hall is far in excess of the level which would be required if the sole criterion were a record sufficient to justify a confident prediction that the applicant could successfully complete the program and become a competent member of the Bar."[6]

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relevant factors, such as motivation, cultural backgrounds of specific minorities that the test cannot measure and they inevitably must impair its value as a predictor." DeFunis v. Odegaard, 416 U.S. 312, 328, 329 (1974), citing Donald A. Rock, "Motivation, Moderators, and Test Bias," 1970 U. Tol. L. Rev. 527, 535 (Spring-Summer 1970).

5. James A. Thomas, "Heavy Traffic on the Purple Brick Road: The Route to Law School," *Hurdles*, ed. Herbert S. Sacks et al. (New York: Atheneum, 1978), p. 225.

6. Joel Dreyfuss and Charles Lawrence III, *The Bakke Case: The Politics of Inequality* (New York: Harcourt Brace Jovanovich, 1979), p. 138.

"The similarity between test scores of 'doctors and dropouts' is shown in a comprehensive attrition study by D. Johnson and E. Hutchins (1966), who analyzed data for all member schools of the Association of American Medical Colleges for the period 1949-58. The study showed that although there was a relationship between test score and performance when the entire range of scores was considered, the chance of success for a student with a middle range verbal ability or science achievement score was only slightly lower than the chance of success for a student scoring 150-200 points higher." Johnson, *The Measurement Mystique*, p. 7.

While law school entrance requirements have risen dramatically with the increase in applicants, minority applicants were not in any way the source of the professional school admissions crunch; they merely coincided with it. For example, there were 33,665 white applicants for medical school in 1976-1977. Of those, 13,038 applicants were accepted and 20,101 were rejected. In that year, 1,313 minority candidates were accepted to medical school. Thus, even if no minority persons had gained admission, there still would have been 19,314 majority-culture individuals who were denied admission to any United States medical school.[7]

Likewise, with law school admissions, minority applications and acceptances have had very little impact on the overall rate of majority-culture acceptances. There were, for example, approximately 83,000 applicants for law school admissions in 1975 for the 39,038 first-year places available in ABA-approved law schools: a ratio of two applicants to every available seat. In 1976, of the 117,451 students enrolled in ABA law schools, only 2,375 or 2 percent were Hispanic.[8] Given the small percentage of minority students actually enrolled in law school, the highly competitive atmosphere for admission cannot be attributed to the minority applicant pool. As one law school dean has stated:

> Racial minorities should not, I repeat, be made the scapegoats for the numbers and admissions crunch. Neither should women. We should, instead, reexamine the larger issues of admissions, questioning the divine-like assumption that only numerical indices measure "quality" or "merit," or potential for performance in the trenches of a profession. And we must pierce the cost-benefit analysis which rationalizes overreliance on them. We must clarify admissions discussion[s] with a contextual analysis of fundamental policies.[9]

B. THE NEED FOR MINORITY PROFESSIONALS

There are currently (1978) 214,159,000 citizens in the United States. Of those, 6.5 percent or approximately 14,000,000 are of Spanish origin and 11.6 percent or 24,839,000 are Black; more than .3 percent or 793,000 (1970) are Native American and more than 1 percent or 2,090,372 (1970) are Asian American.[10] The total

7. Robert Montoya, "The Myth of Reverse Discrimination," *Health Pathways* 1, no. 3 (September 1978): 3, citing Association of American Medical Colleges data.

8. Brief Amicus Curiae for the Association of American Law Schools in Support of Petitioner (No. 76-811) in The Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) at p. 11; Michael Olivas, "Hispanics in Higher Education: Status and Legal Issues," Howard University, Institute for the Study of Educational Policy (Paper presented to the National Association of College Admissions Counselors, Bal Harbour, Fla., 4 October 1978), Table 6.

9. Peter J. Liacouras, *Toward a Fair and Sensible Policy for Professional School Admission, Cross Reference*, vol. 1, no. 5 (Philadelphia, March-April 1978; reprint ed.), p. 157.

10. U.S. Department of Commerce, Bureau of Census, *Statistical Abstract of the United States* (Washington, D.C.: Government Printing Office, 1978), pp. 28, 29, 35; U.S. Bureau of the Census, *Current Population Reports*, Series P-20, no. 328; Series P-60, nos. 118, 119, and unpublished Current Population Survey data.

Accurate and comparable census data by racial group is difficult to determine from the Census Bureau's figures. Population statistics are broken into different tables and many times racial categories overlap or minorities are grouped together. For example, most tables are divided into two headings of "White" and "Black and Other." It is possible that some persons of "Spanish origin" could be considered or consider themselves part of more than one group. Considering the acknowledged undercount in the 1970 census, MALDEF made some calculations to gain a more correct assessment of the number of people of Spanish

number of employed lawyers and judges in the United States in 1977 was 462,000. Of these, only 9.5 percent were female and 3.2 percent were Black and other minorities.[11]

were 117,451 students enrolled nationally in ABA-approved law schools; 2,375 or only 2 percent of those students were Hispanic. In 1977 the total number of Hispanics attending ABA-approved law

Table 1
Law School Enrollment

Total Law School Enrollment

1976-77: 117,451 1977-78: 118,557 1978-79: 121,606

Minority Enrollment	78-79	77-78	76-77
Black Americans	5,350	5,304	5,503
Percent of total	4.4%	4.5%	4.6%
Hispanic	2,758	2,547	2,375
Percent of total	2.3%	2.1%	2.0%
Asian/Pacific Islander	1,424	1,382	1,324
Percent of total	1.1%	1.1%	1.1%
Native Americans/Alaskans	394	363	301
Percent of total	.3%	.3%	.2%
Nonminority Enrollment			
Total	111,684	108,961	107,948
Percent of total	92%	92%	92%

SOURCE: James P. White, "Minority Group J.D. and LL.B., Candidates Enrolled in Approved Law Schools—1971 Through 1978—Minority Group J.D. and LL.B. Degrees Awarded 1977-78," American Bar Association Memo QS 7879-15 (Memorandum to Deans of ABA-Approved Law Schools, Chicago, 30 April 1979).

Based on this data, it is evident that minority-culture persons are now underrepresented in the professions. Present law school admissions data establish that the imbalance will not be improved in the near future. In 1976, for example, there

schools increased slightly, but Hispanics still represented only 2 percent of the total ABA law school enrollment.[12] The data for Blacks and other racial/ethnic groups show similar underrepresentations.

origin in the United States. Using the California undercount percentage, 17 percent, and applying it to the Bureau of Census 1978 number of 12,046,000 for persons of Spanish origin, a conservative estimate for the total number of persons of Spanish origin in the United States is 14,000,000.

In addition, there were no 1978 statistics for Native Americans or Asians, so a 1970 census table is used here which breaks the population into several categories—white, Black, Native American, Japanese, Chinese, Filipino, and other. As you will note, this 1970 table has no specific division for Hispanics, so there is no way to make a cross comparison of population percentages using only statistics from either the 1970 table alone or the 1978 statistics which do not include Native Americans or Asians.

Taking the available statistics on Asians, the numbers of Japanese, Chinese, Filipino, and other (Aleut, Eskimo, Asian Indian, Korean, Polynesian, and other Asian) were totalled to reach the 2,090,372 figure cited above, which is an approximation because it includes Aleuts and Eskimos, technically not Asians, and does not include an adjustment for population growth since the census. The number of Native Americans is also conservative and approximate; it has not been adjusted for population growth since 1970.

11. *Statistical Abstract of the United States*, p. 419.

12. Olivas, "Hispanics in Higher Education," Table 6.

A recent survey of minority lawyers in California shows a decrease in the percentage of minority lawyers since 1970, despite an increase in the absolute number of minority lawyers during those years due to the proportionately larger increase in the numbers of white attorneys between 1970 and 1975. Thus, in 1970 there were 1,473 minority lawyers in the state, constituting 5.62 percent of all lawyers. Although the total number of minority lawyers increased by 15 percent in five years, in 1975 the 1,696 minority attorneys represented only 3.8 percent of the total lawyer population in California.[13] The 1975 breakdown according to racial/ethnic group is as follows:

> [T]he highest ratio for all minority groups was that of Asian lawyers to Asian population in the State with a ratio of 1:896. The ratio of Black attorney/Black population of 1:2098; Chicano, 1:5158; Native Americans, 1:11,355; and Pilipino 1:8212. All of the above are extremely low when compared to the White lawyer/White population ratio of 1:367 and the overall lawyer/State population ratio of 1:475.[14]

The above data are not meant to imply that Black attorneys should and do serve only Black clientele, that Hispanics are able and willing to serve only other Hispanics, and so forth. Certainly, Justice Douglas's concern as expressed in *DeFunis* that the practice of law should not itself become an instrument of segregation is shared by many.[15] However, a recent study of graduates of the Council of Legal Education Opportunity (CLEO) program who are currently practicing law

13. Felicenne H. Ramey, "Minority Lawyers in California: A Survey," *Los Angeles, Daily Journal Report* 78-22 (November 17, 1978): 10.

14. Ibid.

15. DeFunis v. Odegaard, 416 U.S. 312, 342 (1974). Justice Douglas notes in his dissent that the purpose of a state university "cannot be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish. It should be to produce good lawyers for Americans and not place First Amendment barriers against anyone."

Dean Liacouras of Temple University School of Law states, "The point here is not that a black lawyer is consigned to service only black clients, a white doctor only white patients, etc. The clear-cut tendency, however, has indeed been along those lines. Moreover, especially in the Northeastern quadrant where ethnic neighborhoods have been preserved, the political leaders of a community have come from such discrete or identifiable communities. This is cultural pluralism and responsive democracy in action. We should not begin to 'reform' at the expense of blacks and other racial minorities just when they are finally beginning to produce a group of professionals and leaders for their communities and the entire nation." Liacouras, *Toward a Fair and Sensible Policy for Professional School Admission*, p. 164.

"The most important reason for special admissions programs in the law schools is, quite simply, that there is a critical need for more minority lawyers. The 1970 census . . . reported that racial minorities, which constitute approximately 17% of the population, represented barely more than 1.9% of the bar. However dramatic, this gross statistic does not begin to convey the desperate shortage of minority lawyers. A 1968 survey revealed that before special admissions programs began to have an effect there were, in the entire South, only 506 black lawyers. In Mississippi, where the black population was nearly 1,000,000, there were 9 practicing black lawyers. In Alabama, with an even larger population of blacks, there were but 20 and in Georgia only 34. [footnote omitted]

"In drawing attention to this data, we do not suggest that any of the compelling reasons for increasing minority representation at the bar . . . require representation proportional to the relative size of the minority. Opponents of special admissions programs have at times sought to characterize the programs as an attempt that would, they then contend, necessarily imply maximum quotas for each racial and ethnic group in the profession. Stated bluntly, this objection is simply a 'red herring.' The data set forth in the preceding paragraph and elsewhere in this Brief demonstrate that neither now nor in the foreseeable future can there be any question of proportional representation in the bar. The serious question is whether publicly-supported schools can take steps to assure that the representation of minorities at the bar is to be more than negligible. Reasons of compelling social importance . . . require an affirmative answer to that question." Brief Amicus Curiae for AALS in *Bakke* at pp. 42-43.

attests to the variety and diversity of legal work chosen by minority lawyers.[16]

Still, there is also evidence that minority professionals provide greater service, in general, in minority communities than do majority-culture professionals. For example:

> A 1978 California Department of Health Study indicated that 85 percent of the 1971-76 minority graduates of California dental school[s] were providing services mainly to minority patients. Moreover, a large majority of these minority dentists established their practices in or adjacent to minority areas designated by the state as critical health manpower areas.[17]

A law school professor comments with respect to the need for legal services provided by and for various groups:

> The need for a vast increase in the number of black and brown attorneys is critical. The need is immediate and intense, and ways must be found to fulfill it sooner rather than later. If this requires selection of students with markedly lower academic credentials than is customary, this course is fully justified. Certainly a central function of professional schools is to serve community needs for professionals. There is, however, not one community but several, and the needs of some, as we have been recently made aware, have been the subject of notorious neglect. The minority community is entitled to an adequate pool of minority lawyers. The law schools have the obligation to help create it. Equally to the point, a law career in this society is a vital pathway to positions of power. To deny effective access to the profession is to deny totally access to judgeships and to limit severely access to government, business, and politics.[18]

Not only are minority professionals more likely than nonminority lawyers and physicians to provide services in certain racial and ethnic communities, but they serve other important purposes. Apart from the direct services they can render professionally, minority attorneys can furnish invaluable role models for minority youth. With unemployment among minority youth between the ages of 16 and 19 currently at 38 percent,[19] a statistic that would signal an economic depression if prevalent in the society as a whole, minority professionals offer tangible hope that there are not two entirely separate Americas as presaged by the Kerner Commission report in 1968.[20]

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16. Wade J. Henderson, Statement on behalf of the Council of Legal Education Opportunity before the Subcommittee on Post Secondary Education of the Committee on Education and Labor of the House of Representatives, Washington, D.C., 13 June 1979, pp. 10-13.

Of the 1,241 CLEO graduates of the first eight programs, 540 of the 616 participants who submitted information on bar passage had indeed passed and been admitted to practice. Those currently practicing range from judges (8) to legal educators (7) to graduate students in law (5) to numerous public and private sector attorneys (157 and 105, respectively).

17. Barbara N. Hewitt and Carlos E. Cortes, "To Serve Society: An Alternative Model for the Selection of Professional School Students," mimeographed (Riverside: University of California, 1978), p. 16, citing Roberto Montoya,, David Hayes-Bautista, Luis Gonzales, and Edward Smeloff, "Minority Dental School Graduates: Do They Return to Their Communities? Preliminary Results from a Survey on Practice Location Decisions," submitted for publication in the *American Journal of Public Health*.

18. Ibid., pp. 2, 3, citing Leon Letwin, "Some Perspectives on Minority Access to Legal Education," *Experiment and Innovation* 2 (May 1969): 10.

19. U.S., Congress, Budget Office, *Budget Issue Paper for Fiscal Year 1979; Youth Unemployment: The Outlook and Some Policy Strategies*, April 1978, p. 13.

20. *Report of the National Advisory Commission on Civil Disorders* (New York: Bantam Books; New York Times Company, 1968), p. 1.

Hewitt and Cortes cite Michael Rappaport, Assistant Dean of University of California at Los Angeles

In addition, the prevalence of competent minority professionals has the overall salutary effect of erasing conscious or unconscious stereotypes and prejudices which existed and still exist in certain segments of American society.[21] For this reason, the Association of American Law Schools (AALS) in its *amicus* brief in *Bakke* stated:

> We observe preliminarily that the justification for special admissions programs cannot be considered in isolation from the historical and social conditions that have created the need for them. The decisions of this Court--from Dred Scott v. Sanford, 19 How. 393(1857) to Strauder v. West Virginia, 100 U.S. 303(1880) to Brown v. Board of Education, 347 U.S. 483(1954) and beyond—amply record the efforts to exclude [ra]cial minorities from full participation in American life. Until very recently, racial minorities were almost entirely foreclosed from a role in the nation's public life, not only by excluding them from elective and appointive office in national, state, and local government but, in many sections of the country, by denying them the fundamental rights and obligations of citizenship, including the franchise and the opportunity to serve on grand and petit juries. Their children were required to attend segregated and generally inferior schools. They often received lower levels of governmental services than whites and some services were at times simply withheld from them. In the private sector, minorities fared no better. By custom, and occasionally by law, they were relegated to the least desirable employment, to jobs that paid substantially less than those open to whites and that offered neither an opportunity for advancement nor a chance to participate in the many important decisions made in the private sector. The housing available to them displayed a similar pattern. Life in the ghetto and the barrio not only deprive minorities of contact with the dominant society, it subjected them to crowding, inadequate public services, and often to housing that failed to meet the minimal standards of our society. The unpleasant but inescapable truth is that, the Constitution nothwithstanding, there existed in the United States a virtual caste system.
>
> The legacy of that history is the reality we now confront.[22]

School of Law, "The Case for Law School Minority Programs," *Los Angeles Times*, 14 March 1976, pt. IV p. 1: "How, for example, do we measure the future impact of more than 140 minority law school graduates who, but for this program, would not be practicing law today? How do we measure their value not only to the minority communities which in one way or another all the graduates serve, but also to the white communities in which their presence as attorneys must have an impact? How do we measure the value of the fact that for virtually the first time, Mexican-American barrio dwellers can deal with Spanish speaking Chicano attorneys sensitive to the problems of those communities from which they came and which they now serve?

"Is there any means of determining the impact of a black attorney in a Century City law firm that deals with clients involved in the upper echelons of power and decision-making in Los Angeles? What value can we attach to the effectiveness of these attorneys as role models for the youth of the ghetto and the barrio—and as vehicles for breaking down the invidious stereotypes of minorities held by the white community?" Hewitt and Cortes, "To Serve Society: An Alternative Model," pp. 12, 13.

21. *Time* magazine reported on a new study by Arthur Jensen to be published in December of this year. According to the reviewers, the study, entitled *Bias in Mental Testing*, concludes that IQ tests which show Blacks scoring lower than whites are accurate and not culturally biased. Jensen's evidence apparently implies that there may be a permanent Black-White difference in IQ and rejects the possibility of artifacts within the tests themselves which produce the score differentials between groups. "The Return of Arthur Jensen," *Time*, 24 September 1979, p. 49.

See also, Cronbach, "Five Decades of Public Controversy Over Mental Testing," pp. 15-41 for a discussion of Jensen's theories on the heritability of intelligence and the impact of that thesis on racial/ethnic groups.

22. Brief Amicus Curiae for AALS in *Bakke* at pp. 39-40.

Minority attorneys should be visible not only as practicing lawyers but as policy makers in society. Since a high percentage of our national and state legislators and high public appointees are attorneys by training, minority presence in high public office remains minute. Indeed, both public and private policy decisions are often made without due consideration of the perspective of important racial and ethnic communities. Racial/ethnic minorities need to see themselves representing, as well as represented by elected officials; they need to see themselves as governing, as well as governed by the civil and criminal codes which regulate the society in general. Too often, minority persons have been perceived and have perceived themselves as victims of a system of justice constructed to suppress them rather than to guarantee their rights.[23] For racial/ethnic minorities in our society to respect the existing legal system, they must be visibly included in its workings.

Finally, there are certain functions that only persons of particular racial/ethnic origins are able to provide. As pointed out by MALDEF in its *amicus* brief in *Bakke*, monolingualism in a language other than English can effectively preclude certain persons from adequate legal and medical attention. Even in cases where persons of distinct racial and ethnic groups are entirely fluent in English, more effective service can often be rendered by a person of the same racial/ethnic origin solely because of common cultural backgrounds. Dr. Loudell F. Snow in the *Annals of Internal Medicine* addresses the importance of cultural differences and effective health care service:

> The folk medical system of low income black Americans is described, from an ethnographic study of a black neighborhood in Tucson, Arizona. Comparable beliefs among Mexican-Americans, Puerto-Rican Americans, and Southern whites are traced, mainly from published sources. The system is a composite of rare elements of African origin, survivals from the folk and formal medicine of a century ago, and selected beliefs from modern scientific medicine. It includes beliefs about prevention of illness, the classification of illnesses into "natural" and "unnatural" categories, home remedies and preventives, and the ranking of healing practitioners, according to the perception of their ability, their modes of curing, and the types of illnesses they can cure. Folk medical beliefs are at odds with scientific medicine in many respects. Medical personnel should be aware of these differences and how they might affect a patient's behavior.[24]

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23. Examples of egregious violations of constitutional rights based on ethnic/racial origin include the following: Dred Scott v. Sanford, 19 Howard 393 (1857) (held Missouri Compromise unconstitutional because Congress had no power to deprive slave owners of their property without due process and that, in any event, Negro plaintiffs could not be citizens within the meaning of the constitution and therefore could not sue in federal court); Strauder v. West Virginia, 100 U.S. 303 (1880) (state restricted jury service to whites); U.S. v. Stanley, 109 U.S. 3 (1883) (held segregated accommodations not to constitute a "badge of slavery" and that the fourteenth amendment had not given Congress substantive power to protect civil rights but only power to correct abuses by states); Plessy v. Ferguson, 163 U.S. 537 (1896) (upheld state requirement for segregated railroad accommodations resulting in the "separate but equal" doctrine); Grovey v. Townsend, 295 U.S. 45 (1935) (upheld Texas whites-only primary); Steele v. Louisville & N.R. Co., 323 U.S. 192 (1944) (upheld union's right to exclude Blacks from union membership if exclusion is nondiscriminatory).

24. Loudell F. Snow, "Folk Medical Beliefs and Their Implications for Care of Patients," *Annals of Internal Medicine* 81, no. 1 (July 1974): 82; see "A Need for the Awareness of Cultural Differences in Minority Groups," 65 J. Nat'l Med. Ass'n 120-122 (March 1973); see also Brief Amici Curiae (Mexican American Legal Defense and Educational Fund et al.) in The Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) at pp. 1-47.

As the sociological and census data have shown, the need for increased representation by racial and ethnic groups in the professions is acute. The dismal figures of minority participation in legal education and the profession, however, raise a question as to whether minority groups have access in the same manner, constitutionally and morally, as other groups. The subsequent section of the report examines one of the barriers to minority access to law school.

III

USE OF TESTS

In the early twentieth century, when masses of white immigrants were living in poverty, facing an alien culture, and struggling to unionize, they too had test results which showed most of them to be mentally defective. Although test performance undoubtedly depended upon familiarity with American language and culture, the dominant interpretation of the First World War army data stressed that recent immigrants from southern and Eastern Europe had performed poorly because they were members of inferior races—Jews, Alpines, and Slavs, as opposed to Nordics who were superior. The correlation between test scores and the number of years lived in America was explained by the fact that most of the earlier immigrants were from northern Europe and Great Britain while most of the recent ones were not. Carl Brigham, the primary author of this interpretation, received acclaim in psychology journals, influenced congressional debates over immigration restriction, and later came to head the College Entrance Examination Board.

From Jeffrey M. Blum, *Pseudoscience and Mental Ability* (New York: Monthly Review Press, 1978), p. 100.

A. TEST USE IN LAW SCHOOL ADMISSIONS

For racial and ethnic minorities today, the critical admissions problem centers on increasing minority access to law school in a period of exaggerated LSAT scores which have far surpassed the original purpose of the test instrument. Designed to indicate a candidate's competency to study law,[1] the LSAT has become, unintentionally or not, an exclusionary device which has a disproportionate impact on the disadvantaged and on racial/ethnic minorities.[2]

1. See Brief Amicus Curiae for AALS in *Bakke* at pp. 9-12.

The norming of the LSAT is described by W.B. Schrader as follows: "The LSAT scale score was so defined that scores had a standard deviation of 100 for the February 1948 group. . . . The LSAT score scale was so defined that the February 1948 group had a mean of 500. The best available estimate of the mean reported score for the entire period 1948-49 through 1961-62 is 487. Reported scores based on all answer sheets processed by the cut-off date for 'on-time' score reporting have a mean of 512 for the period 1962-63 through 1969-70 and a mean of 522 for the period 1969-70 through 1973-74. These shifts in means presumably resulted mainly from changes in test requirements by law schools and changing patterns of self-selection by LSAT candidates." W.B. Schrader, "Summary of Law School Validity Studies, 1948-1975," *Reports of LSAC Sponsored Research*, 3 vols. (Princeton, N.J.: Law School Admission Council, 1977), 3 (1975-1977): 531.

Allan P. Sindler in *Bakke, DeFunis, and Minority Admissions* corroborates the change in entrance requirements and use of the LSAT: "With but a college degree and a high-C grade average, an applicant was virtually assured of entry into some American Bar Association-approved law school. In 1960 at Boalt (The University of California's Law School at Berkeley), for example, a college average of 'B' earned automatic admission, and those with a lower average often were admitted if they could persuasively explain why their academic record understated their actual abilities. Only applicants with less than a 'B' average were required to take the Law School Aptitude Test (LSAT), and a middling score in the 500s sufficed for admission. On the basis of these criteria, Boalt admitted 73 percent of those who applied." Allan P. Sindler, *Bakke, DeFunis, and Minority Admissions* (New York: Longman, Inc., 1978), p. 28.

2. Alexander W. Astin, "Quantifying Disadvantagement," *Admitting and Assisting Students After Bakke*, ed. Bruce Fuller and Kenneth C. Green (San Francisco: Jossey-Bass, Inc., 1978), pp. 75-83.

To assess fully the impact of the LSAT on minority law school candidates, it is necessary to view the LSAT instrument in light of its original purpose. The LSAT was developed in the late 1940s in response to a high attrition rate during the first year of legal education, even in some of the most prestigious law schools. This rate often surpassed 33 1/3 percent annually.[3] The AALS, in its *amicus* brief in *Bakke*, classifies this period as one of virtual open admissions; that is, competence to perform as a law student was measured by performance in law school itself. The AALS cites the following ABA Survey of the Legal Profession:

> In 1948, 87% of the applicants to the schools surveyed met the schools' minimum requirements and 70% of the applicants were accepted. . . . Descriptions taken from three inspection reports typical of the "vast majority of the schools," were as follows:
>
> "All qualified applicants have regularly been admitted to the law school in recent years."
>
> "The school does not attempt to screen applicants over and above the determination that they have complied with the minimum qualitative and quantitative requirements."
>
> "In the year 1948-49, 190 students entered upon the study of law in this school; only 91 remained in school at the beginning of the following year. Forty of the 190 were flunked out, and 59 others quit voluntarily, most of them persuaded so to do because of low grades."[4]

The LSAT examination was developed exactly prior to this second phase in admissions which corresponded to a period of more applicants to law school than first-year places, with a concomitant need to admit more selectively and reduce attrition among the first-year class.[5] The LSAT, in fact, did increase law schools' ability to predict who would not succeed in the first year of law school and the test was used principally for that purpose until the 1960s when, as the AALS recounted, the third stage of admissions was reached: the number of qualified applicants far exceeded the number of first-year places in law school.[6] The admissions procedure then came to embody an extremely quantified eliminative process the major objective of which was to select those applicants with the highest cognitive predictors.

B. CURRENT TEST MISUSES

Inequities, unfortunately, accompany this third and highly competitive phase of professional school admissions in which most schools now find themselves. First, the LSAT was not designed nor was it intended to be used as the ultimate criterion of who should gain admissions to law

See also, Franklin R. Evans, "Applications and Admissions to ABA Accredited Law Schools: An Analysis of Data for the Class Entering in the Fall of 1976," *Reports of LSAC Sponsored Research*, 3 vols. (Princeton, N.J.: Law School Admission Council, 1977), 3 (1975-1977): 551-636.

3. John A. Winterbottom, "Comments on 'A Study of the Criteria for Legal Education and Admission to the Bar' an Article by Dr. Thomas M. Goolsby, Jr." 21 J. Legal Educ. 76 (1968).

4. Brief Amicus Curiae for AALS in *Bakke* at p. 10.

5. Ibid.

6. Ibid., p. 11. There were approximately 83,000 applicants for law school admissions for the 39,038 first-year places available in ABA-approved law schools in 1975. See Section II, Part B, Table, p. 1, *supra*, for more recent data.

7. *Principles, Policies and Procedural Guidelines Regarding ETS Products and Services* (Princeton, N.J.: Educational Testing Service, 1979), pp. 47-48.

school. As stated by the Educational Testing Service (ETS) in its procedural guidelines relating to correct use of the LSAT:

> Program publications should: . . . explain clearly that test scores reflect past opportunity to learn and discourage test interpretations that go beyond reasonable inferences from test performance; . . . emphasize that an individual's test score should be interpreted in the context of other information about him or her; . . . *stress that pass-fail or cut-off scores established for such purposes as admission, credit, or certification, should be used as a basis for decision making only if the institutional or agency user has a carefully developed rationale, justification, or explanation of the cutting score that is adopted; . . . and encourage institutional or agency users to reexamine cut-off score policies periodically to minimize or eliminate possible disproportionate exclusion of members of any group such as men and women drawn from diverse backgrounds in the face of other evidence that would predict their success or indicate their competence.* [emphasis added][7]

Indeed, it is well recognized that standardized examinations such as the SAT and LSAT are most useful in ferreting out those individuals who probably do not possess sufficient potential in a given area as well as indicating which others may be academically outstanding. The Carnegie Council on Policy Studies in Higher Education makes the following comment with regard to correct usage of test scores:

> Traditional measures like grades and test scores are useful but are usually not sufficient as a sole basis for action. They are best at determining at one end those applicants who are likely to distinguish themselves academically, and at the other end those likely to fail—and failure is costly to the student and to the institution. They are not suited for fine tuning in between—a 525 score is not clearly better than a 500 score; and the same student may make these two different scores when taking equivalent tests. Yet tests are often used for making fine distinctions. Reasons for this include: it is easier to make policy on what are seemingly precise and objective grounds; such policies are easier to explain (although not easy to justify if challenged); such policies tell potential applicants in advance whether they should apply or not; such policies are easy to administer—they can be applied by clerks or by a computer; such policies give admissions officials and others a score card that they can display to trustees, alumni and other competitive admissions officers. . . . Fine tuning with test scores can look attractive but it is a misuse of tests.[8]

Another researcher states that, "[a]bove intermediate score levels, academic skills assessments are found to show so little criterion validity as to be questionable bases on which to make consequential decisions about students' futures."[9] Final-

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8. "Public Policy and Academic Policy," *Selective Admissions in Higher Education*: The Carnegie Council on Policy Studies in Higher Education (San Francisco: Jossey-Bass, Inc., 1977), p. 10.

9. Michael Wallach, "Tests Tell Us Little About Talent," *American Scientist* 64, no. 1 (January-February 1976): 57.

See also footnote 4 (Section II, Part A), *supra*, in which both Professor Wigmore and Justice Douglas express grave concern over the range of skills which can be adequately measured by an admissions examination to predict accurately success in law school.

Justice Douglas at page 335 of *DeFunis* remarked: "Insofar as LSAT tests reflect the dimensions and orientation of Organization Man they do a disservice to minorities. . . . My reaction is that the presence of an LSAT test is sufficient warrant for a school to put racial minorities into a separate class in order to better probe their capacities and potentials."

He continued at page 340: "The key to the problem is consideration of such applications *in a racially neutral way*. Abolition of the LSAT would be a start. The invention of substitute tests might be made to get a measure of an applicant's cultural background, perception, ability to analyze, and his or her relation to groups. . . . A law school is not bound by any legal principle to admit students by mechanical criteria which

ly, an ETS researcher caveats:

> This tendency to overinterpretation [of the spectrum of traits measured by tests], unfortunately, is not totally ascribable to wishful thinking on the part of the uninformed public. Wishful thinking on the part of testers and researchers also causes a stretching of the intepretation across very questionable areas of the spectrum.[10]

A second inequity occurs when undue reliance is placed on the LSAT as an evaluator for law school admission: this inequity is that persons from minority and disadvantaged backgrounds are excluded at a disproportionate rate. ETS research conducted in 1973 established that there is a 133 point discrepancy between the average white and Black male LSAT scores and an 89 point discrepancy between the average white and Chicano scores.[11]

Whether or not such disparate standardized test scores indicate cultural bias is beyond the scope of this report. In the first place, there is no generally accepted definition of cultural bias in the psychometric sense. Several ETS researchers have devoted whole articles to the subject. Their discussions, as well as those of independent researchers, always appear to become mired in the enigmatic meaning of bias in testing.[12]

Undoubtedly, the test scores disproportionately and negatively impact on minority and economically disadvantaged people; therefore, it is difficult to concur wholeheartedly with the statement made by the AALS in its *amicus* brief in *Bakke* "that the [LSAT] test is not biased," since it does not underpredict the actual performance of Blacks and Chicanos in law school.[13] Instead of determining cultural bias on the basis of overprediction which may be a statistical artifact given the small number of minorities included in the studies, it would seem that first there must be a consensus on the definition of test bias itself.[14]

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are insensitive to the potential of such an applicant." DeFunis v. Odegaard, 416 U.S. 312, 335, 340 (1974).

10. Ronald L. Flaugher, "The Many Definitions of Test Bias," mimeographed (Princeton, N.J.: Educational Testing Service, 1978), p. 10.

11. Vilma S. Martinez and Mario Lara, "Who Gets In?" *Self Determination Quarterly Journal* 2, issue 1 (Santa Clara, Cal.: March 1978): 17, citing a 1973 Educational Testing Service study.

Additionally, in a MALDEF article we maintain, "A number of mitigating factors influence the success of a disadvantaged student, and while undergraduate grades and the LSAT doubtless operate as valuable predictors overall, their validity is limited and far from precise. This is particularly true with regards [*sic*] to judging the potential of Special Admissions students where their predictors tend to present a distorted and incomplete measure of legal ability, magnifying rather than mirroring whatever genuine group difference may exist." Vilma S. Martinez and Mario Lara, "Standardized Testing: Prediction or Prejudice?" mimeographed, p. 10.

12. Robert Linn explores the definition from the following perspectives: different averages in test scores for different groups; equality of prediction systems connoting test modification to diverse groups to ensure proportional selection among subgroups; test bias as defined by under or overprediction within a predictive context; and equal risk models meaning that every person from each subgroup should have an equal possibility of being chosen despite overall group differences in test scores. Ronald Flaugher performs a similar analysis of test bias focusing on the different possible definitions with no general psychometric agreement on the meaning of bias. Again, his definitions include: mean differences in test scores, overinterpretation, sexism, differential validity, test content bias, bias in the selection models, use of the wrong criterion, and bias in the testing atmosphere. Linn, "Test Bias and the Prediction of Grades in Law School," p. 3; Flaugher, "The Many Definitions of Test Bias," pp. 57-63.

See also Johnson, *The Measurement Mystique*, pp. 15-38.

13. Brief Amicus Curiae for AALS in *Bakke* at p. 13.

14. Johnson's analysis of the overprediction issue is as follows: "The concept of overprediction has been explored in several studies (Temp, 1970; Pfeifer and Sedlacek, 1971). In overprediction, the predicted performance is actually higher than the real performance level which the individual achieves. This

In the absence of an accepted definition of bias, attention should focus on the established negative effects of standardized examinations on racial/ethnic and disadvantaged groups. Here the facts are unambiguous. In a study conducted in 1977 by ETS researchers which analyzed national law school data for the class entering in the fall of 1976, the following facts emerged:

> If the nation's law schools were to adopt an admissions policy taking no account of minority backgrounds of blacks and Chicanos, a majority of the students from those groups now admitted and enrolled would be excluded. If blacks and Chicanos were accepted at the rates for nonminorities at the same levels of LSAT and UGPA, the reduction in their enrollment would be 60% and 40%, respectively. If numerical predictors were employed exclusively for all applicants, the resulting reductions would be 76 to 78% for blacks and 45 to 48% for Chicanos. When law schools were asked to estimate the number of those minorities who would have been admitted if their minority status was unknown, they estimated reductions of 80% for blacks and 70% for Chicanos. The percentage blacks among first-year law students would drop to between 1% and 2% from the current 5.3%, and the percentage of Chicanos would fall to between 0.4% and 0.8% from the current 1.36%.[15]

The issue, then, of whether or not the examination is culturally biased appears obfuscatory. The cold reality is that when the LSAT is heavily weighted in the admissions process minority persons are virtually excluded from admission to law school and entry to the profession. Unless one ascribes to eugenicist-type philosophies regarding the inherent superiority of certain races, the logical conclusion is that, for whatever reasons, certain groups generally are not adequately evaluated by standardized instruments under the present state of the art in psychometrics.[16] Of

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situation is an artifact, caused by one or more of the following factors: (1) a restriction in range on the test score; (2) restriction of range of the particular criterion measure employed; (3) low reliability of either predictor or criterion; (4) use of a biased criterion; (5) combining of groups of highly unequal size, resulting in slopes and/or intercepts in the prediction equations being different from that of the smaller group; (6) failure to include items with good discrimination power within minority groups. The Pfeifer and Sedlacek (1971) study involved scores of Black and white undergraduates on the Scholastic Aptitude Test (SAT), and their performance in college. They found mild overprediction for Black students when a regression equation based on all entering students was used. They note, however, that the use of this equation reduced the correlation between test and performance from .61 to .46. Further examination of the data reveals an increased standard error of the estimate of grade point average from .52 to .56. Since the standard deviation of the grade point average for Black students was .63, the test provides little benefit in selection. Noting the existence of overprediction is misleading here. It is not the good quality of the test for use in selection that should be noted. It is the failure to locate characteristics that are really related to achievement for Black students." Johnson, *The Measurement Mystique*, p. 44.

15. Evans, "Applications and Admissions to ABA Accredited Law Schools," pp. 566-567.

MALDEF, as part of the Law School Admissions Study, distributed a survey instrument to the fifteen ABA-approved law schools in California. The survey methodology and data analysis are provided in Section IV, *infra*. The questionnaire did reveal, in part, a decline in minority enrollment in ABA-approved California law schools since the academic year of 1973-1974, during which a peak enrollment of 18 percent was reached. Since that year, there has been a steady decline in minority enrollment which dipped to 14 percent in 1978-1979 and is at 15 percent for the 1979-1980 academic year.

16. The Eugenics movement refers to the theory of the heritability of intelligence as it developed in the late 1800s. Sir Francis Galton, known as the father of the Eugenics movement, postulated that natural abilities were inherited. Herbert Spencer carried the concept further by asserting that intelligence itself was inherited. Spencer's theories came to embody a sort of social Darwinism which focused on breeding a better society to cure prevailing social ills. From this atmosphere the IQ test was developed with the intent of measuring innate intelligence; the result of test usage was to establish the supremacy of whites over Blacks, rich over poor, and native-born over immigrants. As Thomas Gossett points out: "What is noticeable is that American thought of the period 1880-1920 generally lacks any perception of the Negro

course, score differences may also reflect well-documented discrimination against certain groups which has relegated them to inferior educational facilities and learning environments.[17] Test makers themselves refute the notion of an achievement-free ability test, so societal factors cannot be discounted when assessing the value of standardized testing instruments.[18]

The conclusion that standardized admissions examinations do not accurately measure some racial/ethnic groups is even more compelling when it is remembered that examinations such as the LSAT and MCAT have not been constructed to measure actual life performance as an attorney or physician, but rather predicted first-year average in professional school.[19] ETS is currently conducting a

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as a human being with potentialities for improvement. Most of the people who wrote about Negroes were firmly in the grip of the idea that intelligence and temperament are racially determined and unalterable. They concluded, therefore, that the failures of Reconstruction, the low educational status of the Negro, the high statistics of crime, disease, and poverty, were simply the inevitable results of his heredity. The defenders of the Negro were thus cast in the role of sickly humanitarians who refused to face facts." Thomas Gossett, *Race: The History of an Idea in America* (New York: Schocken, 1965), p. 153.

Interestingly enough, general public disenchantment with the Eugenics movement coincided with the Great Depression. With a high percentage of the general population out of work, it no longer seemed tenable to attribute unemployment and social ills to inferior intelligence. For a discussion of the Eugenics movement and testing in general, see Blum, *Pseudoscience and Mental Ability* and Paul L. Houts, ed., *The Myth of Measurability* (New York: Hart Publishing Company, Inc., 1977).

See also Larry P. v. Riles, ____ F. Supp. ____ (N.D. Cal. 1979) which supports the proposition that injunctive relief as to future testing and mandatory reevaluations of children already classified as educably mentally retarded (EMR) and appropriate remedies where racial imbalance exists in EMR classes and where IQ test scores are the most important factor in making assignments to such classes. The ruling in favor of the plaintiffs was based, in part, on the equal protection clauses of the United States and California Constitutions and Title VI of the Civil Rights Act of 1964.

17. See, e.g., Ward v. Flood, 48 Cal. 36 (1874) (upheld exclusion of Black children from white public schools in San Francisco); Cumming v. Richmond County Bd. of Educ., 175 U.S. 528 (1899) (unsuccessful challenge of unequal allocation of public funds to Black and white schools); Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938) (state law school refused Black plaintiff admission but offered to pay tuition at neighboring state law school); Davis v. County School Bd., 103 F. Supp. 337 (E.D. Va. 1952) (court upheld state constitutional provision requiring segregated schools but noted inequalities in buildings, facilities, and curricula); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973) (Court found that the Texas school financing system was not discriminatory as based on wealth since wealth is not a suspect classification subject to the strict scrutiny test of the equal protection clause and, further, that education is not a fundamental right afforded protection under the Constitution).

See also Larry P. v. Riles discussed *supra* in footnote 16.

18. In one ETS study, the author states, "many critics of testing merge the concept of equality of *opportunity*, which is certainly a legitimate goal to be sought, with the concept of equality of *result*; but it is only results that the test in fact measures. The existing discrepancy is evidence that the legitimate goal has not been attained; to accept the discrepancy instead as evidence of test bias is to deflect attention from the pursuit of that legitimate goal.

"Once again, this may be an example of the failure to make the distinction between achievement, which is a reflection of past accomplishment, with aptitude, defined as a statement about capacity to achieve in the future. Certainly denial of capacity in an entire ethnic group would raise the question of bias, but that is not what mean differences in our tests are saying—or even can say. The myth of the achievement-free aptitude test will probably always be with us, but it is only a myth, serving to complicate our communications enormously." Flaugher, "The Many Definitions of Test Bias," p. 8.

19. In "The Status of Selective Admissions," Warren Willingham and Hunter Breland assert: "First, it should be said that admissions tests are designed explicitly to predict success in school, not success in later life, and the *Washington v. Davis* (1976) decision confirms the appropriateness of validating such tests against school performance. Second, it is certainly true that no one expects schooling to be the same as working and that success in life depends heavily upon character, drive, good fortune, and many other factors in addition to the intellectual competence that is heavily represented in grades and ability tests. But competence is *one* of the important determiners of life success and *that one should be able to find confirming evidence in a positive, though undoubtedly limited, association between aptitude tests and significant markers of life success.*" [emphasis added] Warren Willingham and Hunter Breland, "The

five-year study which will attempt to relate law school prediction criteria to success in practice and those characteristics which are necessary to be a good legal practitioner. Unfortunately, the study will not be completed for several years and it appears to be limited in scope to that of a pilot study.[20]

In the medical area, however, there is published data on the correlation between MCAT scores and actual success in clinical programs in medical school and practice. A study relating MCAT scores to success in clinical work has, in fact, established a negative relationship between high standardized examination marks and clinical success.

A good summary statement regarding the invalidity of traditional criteria is as follows:

"Several investigators have observed that the criteria for selecting medical applicants correlate poorly with the student's performance in medical school and not at all with their performance as physicians. In particular, investigators have not been able to predict physician performance by college grade point average, a criteria greatly emphasized by medical schools admissions committees. Similarly, the grade average obtained as a medical student, considered as an important factor in acceptance in internship-residency programs, has been found to have a zero correlation with a physician's clinical performance." (Friedan, 1972).

Another study (Howell, 1967) compared MEDCAT performance of 180 randomly selected physicians working in a Public Health Service hospital with supervisor ratings in various clinical indices. Basically, they found that MEDCAT scores and clinical performance were *negatively* correlated.[21]

Status of Selective Admissions," *Selective Admissions in Higher Education*: The Carnegie Council on Policy Studies in Higher Education (San Francisco: Jossey-Bass, Inc., 1977), p. 135.

20. Telephone conversation on 18 June 1979 with Thomas O. White, Program Director for Law Programs, Educational Testing Service.

See also, Hunter Breland, "DeFunis Revisited," *Reports of LSAC Sponsored Research*, 3 vols. (Princeton, N.J.: Law School Admissions Council, 1977), 3 (1975-1977): 64.

For an interesting study of the impressions of legal practitioners, graduates of six diverse law schools, about the relevance of their law school training to their actual work, see Leonard L. Baird, "A Survey of the Relevance of Legal Training to Law School Graduates," *Reports of LSAC Sponsored Research*, 3 vols. (Princeton, N.J: Law School Admissions Council, 1977), 3 (1975-1977): 678-719. The alumni surveyed were graduates of the classes of 1955, 1965, and 1970; although the perceived usefulness of their legal training varied from one type of practice to another, many expressed some dissatisfaction with the academic preparation they received as it related to actual skills needed in practice.

21. Dr. Montoya continues: "*Traditional criteria for medical school admissions are invalid for everybody*, i.e., Chicano/Latino, Black, Anglo. Presumably these criteria are utilized to select persons who will be successful in medical school study, and, more importantly, select persons who will be good *end products* of this training, i.e., good clinicians. The medical education literature is replete with studies which refute the validity of these criteria for these purposes. I have gone through the medical education literature of the past twenty years which deals with correlations of traditional criteria with medical school and subsequent performance. In general, these studies show that traditional criteria often have a slight positive correlation with performance during the preclinical first two years of medical school. Correlations with the clinical last two years of medical school tend to be only slightly positive, and many are in fact slightly negative. Correlations of traditional criteria with performance after graduation from medical school are generally a scatter [*sic*] around zero.

"A recent study (Simon, 1975) looked at 23 minority students admitted in 1970 and 1971 to the University of California at San Diego Medical School. Applying UCSD's regular, traditional admissions criteria, only one of these 23 would have been accepted; *22 out of 23 would have been rejected*. In terms of basic science performance of these 23 minority medical students, 17 passed the National Board of Medical Examiners Part I on their first attempt, and all of the others subsequently passed. In terms of clinical performance, the minority students have been performing at an average level. All 23 passed pediatrics and surgery clerkships on their first attempt, but 2 had to repeat the medical clerkship. A randomly selected

The results, though ironic, reinforce the belief that ability to test well on a standardized examination should not be determinative of one's opportunity to enter professional school.

It should not be concluded that all standardized examination scores are necessarily invalid predictors. Some of the skills measured by the LSAT may mirror those tasks necessary in law school.[22] But the measurement is inexact and subject to gross exceptions, especially for minorities and disadvantaged, as evidenced by the innovative summer program established at Emory University Law School in 1966 and continuing until 1969. Under that program, students with LSAT scores in the 400 and below range (the mean was 355) not only attempted the study of law, but 27 out of 35 students completed the Pre-Start Program with good academic records and enrolled in Emory's regular law school program. Of those 27, all had completed law school or were completing legal studies at the time of publication of the article, with the exception of three students. Of those three, only one was excluded for academic reasons.[23] Thus, the LSAT cannot be accorded a mystique which it does not deserve.

Neither should the LSAT be the chief evaluative instrument in admissions when when it has been conclusively established that the effect of overemphasis on standardized instruments in the admissions process leads to the virtual exclusion of certain racial/ethnic minority groups.[24] The LSAT, if used, should be utilized in accordance with its design and the caveats issued by its maker and sponsor. The LSAC has carefully promulgated Cautionary Policies which delineate the correct usage of the LSAT.[25]

Some of the important policy guidelines are as follows:

A. Do Not Use the LSAT Score as a Sole Criterion for Admissions

The LSAT score should be used as only one of several criteria for evaluation and should not be given undue weight solely because its use is convenient. Admissions officers should always keep in mind the fact that the LSAT does not measure every discipline-related skill necessary for aca-

group of 21 of their traditionally admitted cohorts showed 1 had to repeat the medicine clerkship, and 1 had to repeat the surgery clerkship.

"We thus see that 23 minority students were well on the way to becoming competent physicians. *Regular, traditional criteria would have cut this to only one minority physician.*

"An important point in this study is that the minority students average overall GPA was 2.93, their average science GPA was 2.84, their average MEDCAT science score was at the 45th percentile, and their average MEDCAT quantitative score was at the 37th percentile. All of these average scores were more than one standard deviation below that for regularly admitted students. . . . The data shows that all of these minority students with low traditional criteria had been successful through the third year of medical school." Robert Montoya, "The Invalidity of Traditional Admissions Criteria and Invalid Logic of Reverse Discrimination Cases: Health Professional Admissions to Meet Society's Needs," *Health Pathways* 1, no. 5 (November-December 1978): 1, 2.

22. Martin H. Redish, "Preferential Law School Admissions and the Equal Protection Clause: An Analysis of the Competing Arguments," *Reports of LSAC Sponsored Research*, 3 vols. (Princeton, N.J.: Law School Admission Council, 1977), 3 (1975-1977): 186-187; reprint from 22 U.C.L.A. L. Rev. 343-400 (1974).

23. For an interesting discussion of a successful summer program with the goal of providing law school access to Black students who would otherwise have been precluded from attending any accredited school, see Nathaniel E. Gozansky and Michael D. Devito, "An Enlightened Comparison: The Relevant Strengths and Weaknesses of the CLEO Program and the Pre-Start Program of Emory University," 1970 U. Tol. L. Rev. 719-745 (Spring-Summer 1970).

24. Evans, "Applications and Admissions to ABA Accredited Law Schools," pp. 551-637.

25. "Cautionary Policies Concerning Use of the Law School Admission Test, the Law School Data Assembly Service, and the Law School Candidate Referral Service," memorandum (Princeton, N.J.: Law School Admission Council, 1978) to Law School Deans, LSAC Council Representatives, Admissions Committees, and LSAC Board and Committee Members.

demic work, nor does it measure other factors important to academic success.

B. Do Not Rely on the LSAT Without Testing Its Predictive Utility at Your School; Validity Studies

The LSAT score should be used only when there is a demonstrated relationship between scores and actual performance in the user law school.

Quantitative data used in the selection process should be validated regularly so the law school can use LSAT scores and other information most effectively. The Law School Admission Council offers an annual Validity Study Service to schools, at no charge, for this purpose.

C. Do Not Use LSAT Scores Without an Understanding of the Limitations of Such Tests

Admissions officers and members of admissions committees should be knowledgeable about tests and test data and should recognize their limitations. Such limitations are set forth in the *Operations Reference Book* and are regularly discussed at workshops sponsored by the Law School Admission Council.

D. Avoid Improper Use of Cut-Off Scores

Cut-off LSAT scores (those below which no applicants will be considered) are strongly discouraged and, in any event, *should be used only if choice of the particular cut-off score is based on a carefully considered and formulated rationale* [emphasis added] (for example, one based on clear evidence that those scoring below the cut-off have substantial difficulty doing satisfactory law school work.) *Note that the establishment of a cut-off score will often involve distinctions based on score differences not substantial enough to be reliable* (see Paragraph E below), *and may have a greater adverse impact upon applicants from minority groups.* [emphasis added] Normally, an applicant's LSAT score should be combined with the undergraduate grade point average before any determination is made about the applicant's probability of success in law school.

E. Do Not Place Excessive Significance on Score Differences

Scores should be viewed as approximate indicators rather than exact measures of an applicant's abilities, and distinctions should be made among applicants on the basis of scores only when score differences are reliable. The three-digit reported LSAT score may create an impression of precision not justified when the admissions official understands the standard error of estimate in the test, as discussed in the *Operations Reference Book*.[26]

In summation, standardized examinations, such as the LSAT, if used at all, should be utilized with great caution and an almost religious adherence to the caveats and cautionary policies issued by the test makers. Winton H. Manning, Senior Vice President of the Educational Testing Service, expressed the following philosophy regarding the correct use of tests in the evaluation of applicants as complex human beings:

> Admissions data should be *sufficient*, in the sense that evaluations of applicants will be fairer if they arise from many diverse assessments of talent rather than only one or two.
>
> This argument does not imply that tests are insufficient in the sense that they lack validity, but that they are insufficient because they do not reflect a broad enough spectrum of the talents for graduate study that are important in reaching admissions decisions. To the extent that institutions rely exclusively on tests and grades as sole criteria, the arguments that some students should be evaluated along other dimensions than these alone has some merit. More properly,

26. Ibid.

> however, *all students* deserve to be evaluated as a tapestry of talents rather than as a pen and ink drawing, despite the fact that the latter may be a faithful rendition of the essential outlines of the portrait.[27]

The admissions criteria which are presented in Section VI, *infra*, represent workable alternative criteria which may be selectively adapted and utilized by different law schools in accordance with their own individual objectives. Most importantly, the alternative criteria attempt to provide, as suggested by Mr. Manning, evaluative tools which assess individuals, both minority and nonminority, as complex human beings whose potential for success in law cannot be fully evaluated by use of the limited measurements of the LSAT and GPA.

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27. Winton H. Manning, "The Pursuit of Fairness in Admissions to Higher Education," *Selective Admissions in Higher Education*: The Carnegie Council on Policy Studies in Higher Education (San Francisco: Jossey-Bass, Inc, 1977), p. 38.

IV

QUESTIONNAIRE ANALYSIS

A. INTRODUCTION

An integral part of MALDEF's Law School Admissions Study involved obtaining accurate information on current admissions procedures in ABA-approved California law schools. Information on admissions procedures was gathered through informal meetings with Deans and Directors of Admissions of different law schools. Formal information, however, was solicited by means of an eleven-page questionnaire which was distributed to all of the fifteen ABA-approved law schools in California.[1] A copy of the questionnaire is attached.

Prior to distribution, the survey instrument was reviewed by two independent sociologists, one statistician, and a private consulting firm which certified that it was in conformity with established procedures and practices of survey methodology. The questionnaire was then test-piloted at two ABA-approved law schools located in the East.[2] Subsequent to the test-pilot, minor revisions in the instrument were made. Finally, the questionnaire was mailed or delivered personally to the Deans of all fifteen ABA-approved law schools in California. A cover letter containing instructions and definitions relevant to completion of the instrument was included with each questionnaire. Moreover, respondents were informed by the cover letter that MALDEF personnel, as well as several Deans serving on the Advisory Committee of the Law School Admissions Study, were available at all times to answer questions or clarify items in the survey instrument. Respondents were assured that all information provided would be held confidential and that nowhere in the analysis would we identify a school by name. This notwithstanding, we were unable to obtain complete information for several items.

Pursuant to our initial contacts with the fifteen law schools, all agreed to participate. Where necessary, MALDEF staff made follow-up efforts in the form of letters and telephone calls. Although the questionnaires were often completed by Directors of Admissions or Assistants to the Dean, in all cases the Dean of each law school assumed responsibility for the accuracy and completeness of the information provided.

Fourteen of the fifteen questionnaires, or 93 percent, were completed and returned. Indeed, this is a very high rate for a mail survey.[3] Only thirteen, however, are included in the analysis since one arrived late.[4] The analysis was undertaken in two stages. In the first, two

1. The law schools participating in the study were: California Western University, Golden Gate University, Hastings School of Law, Loyola University, McGeorge University, Pepperdine University, Southwestern University, Stanford University, University of California at Berkeley, University of California at Davis, University of California at Los Angeles, University of San Diego, University of San Francisco, University of Santa Clara, and University of Southern California.

2. Rutgers University and Temple University Schools of Law.

3. The fifteenth school was unable to complete the questionnaire due to the personal problems of one of its staff members.

4. Subsequent analysis of this questionnaire revealed no significant departure from the other thirteen.

graduate students tabulated and summarized the data. The second involved a more thorough and detailed analysis in which two sociologists focused on trends and patterns using both statistical and descriptive methodologies. We present the findings in six sections, paralleling the questionnaire format.

B. MAJOR FINDINGS

1. Apparently, the *Bakke* case has had little impact on admissions procedures of the thirteen ABA law schools in California included in the analysis.

2. Admissions procedures, policies, and criteria seem to be fairly consistent across all the law schools. In other words, we found little variation in structure, role, and procedures employed by admissions committees and in the weights assigned to various criteria (e.g., GPA, LSAT, and noncognitive factors) in the evaluation of applicants.

3. Noncognitive factors (e.g., sex, age, ethnicity, religion, etc.) have become increasingly important in the selection process during the past five years.

4. Minority enrollment in law schools between 1970 and 1979 has been marked by peaks and slides. The proportion of minority students has ranged from 11 percent to 18 percent of the total enrollment, reaching its peak in 1973-1974. Since that time, however, there has been a steady decline, decreasing to 14 percent in 1978-1979.

5. As is commonly known, minority applicants have lower LSAT/GPA scores than majority applicants. Thus, noncognitive factors can play an important role in the selection and admission of minorities.

C. DETAILED ANALYSIS

ADMISSIONS COMMITTEE

Most law schools (eleven out of thirteen) had only one admissions committee, composed primarily of faculty members.[5] The committees were composed of 62 percent faculty, 16 percent administrators, and 22 percent students. Generally, committee members were appointed by the Dean of the law school for a one-year term. Only in three schools were students involved in the selection of committee members.

In 77 percent of the schools, each member of the admissions committee had an equal vote. In schools where students sat on the admissions committee, they generally did not have a vote. In cases of tie-votes and/or lack of consensus, decisions were reached in the following manner:

(1) two schools reviewed the files again;
(2) two schools required that a faculty member from outside of the committee make the final decision;
(3) in one school the Dean made the final decision; and
(4) one school denied admission in such a case.

None of the schools, however, required a unanimous vote by the committee in order for an applicant to be accepted. Eight schools required majority approval, and, in one school, a faculty vote overrode a student's vote.

APPLICANT REVIEW PROCESS

Seventy percent (9) of the schools stated that they did not have separate review committees for regular and "special" applicants before the decision on *Bakke*. Thirty percent (4) had reported using separate review committees prior

5. In both schools with more than one admissions committee, the first had the power to admit students and the second served only as an advisory body.

to *Bakke*, but only 15 percent (2) were "formally" separated. Currently, 85 percent (11) of the schools do not use separate review committees. In fact, only one school reported having separate committees.

All schools reported using a specific GPA/LSAT predictive index to evaluate applicants, with the LSAT score carrying the most weight (anywhere from 40 to 70 percent, depending on the school).[6] Yet, 70 percent (9) of the schools responded that they did not reject applicants with LSAT scores below a specified minimum, while 30 percent (4) did.[7] Given our experience on university admissions committees, we note that in most cases minimum scores are established, formally or informally, during the review process. This calls into question the large percentage of law schools reporting that they do not reject applicants with LSAT scores below a specified minimum.

Sixty-two percent of the schools (8) indicated that they have automatic or administrative admissions based on applicants' GPA/LSAT indices, while 38 percent (5) reported that they do not. Seventy-seven percent (10) of the schools have a discretionary admissions policy that evaluates more than the GPA/LSAT index for "special" or diverse applicants, while 23 percent (3) of the schools indicated that they do not have such an option. On the average, about 42 percent of the entering class is admitted through discretionary admissions policies.

It appears that admissions committees

Table 2
Noncognitive Characteristics That Enter Into Admissions Decisions

Characteristics	Number	Percentage
employment during college	13	100
demonstrated leadership	13	100
employment after college	12	92
ethnicity	12	92
demonstrated community service	11	85
race	11	85
sex	10	77
bilingualism	10	77
socioeconomic status	10	77
handicap	9	69
geographic location	8	62
rurality	7	54
age	7	54
parental education	7	54
segregated housing	7	54
segregated schooling	7	54
parents or relatives alumni	6	46
parents or relatives donors	5	38
religion	3	23
other	5	38

6. Furthermore, twelve of the fifteen schools noted that the candidate's GPA/LSAT index was evaluated upon initial review of the file.

7. For two of these schools, a minimum score of 399 was indicated for all students. In the other two schools, different minimum scores were required for regular and "special" applicants. Regular applicants needed 500 on the LSAT, while no minimum was specified for "special" applicants.

take into account a wide variety of noncognitive factors in making admissions decisions for both regular and "special" applicants. When asked to check from a list of noncognitive characteristics that enter into their decisions, we obtained the results reported in Table 2.

Overall, the great majority of students (93 percent) are evaluated to some extent on the criteria listed in Table 2. Depending on the school, however, the proportion of applicants reviewed under such criteria ranged from 60 percent to 100 percent. For regular applicants about 20 percent of the decision rests on noncognitive variables, while for "special" applicants the figure increases to about 27 percent. This finding can be taken as suggestive since only four of the thirteen schools responded to this item. The only tentative conclusion we can reach is that prior to 1975 noncognitive factors did not enter significantly into admissions decisions. Beginning in 1975, noncognitive factors entered for both regular and "special" applicants, and weight given to such factors is only slightly higher for "special" students. Here, again, we must question the reliability of the data since it is commonly known that noncognitive factors (especially, whether the applicant's parents are alumni or donors to the institution) historically have played a role in the selection process.

Finally, law schools reported that they do not interview regular applicants. Some schools, however, make an effort to interview a large proportion of their "special" applicants. Overall, about 2 percent of the regular applicants and 36 percent of the "special" applicants are interviewed.

RECRUITMENT AND SUPPORTIVE PROGRAMS

The average recruitment budget for the thirteen schools was $9,825, ranging from $0 to $45,000. The average recruitment budget specifically earmarked for "special" students was $1,440, ranging from $0 to $4,500.

Thirty-one percent of the schools indicated that they had separate recruitment programs for regular and "special" applicants. Although in 77 percent of the schools minority students were actively involved in recruitment, only in 15 percent did they have an influence on recruitment policy.

Sixty-nine percent of the schools offered some form of academic support services for all students, while 15 percent offered such services for "special" students only. We must note, however, that academic support services ranged from short orientation programs prior to the first day of classes to those that continue for the duration of the law school program, including assistance in preparation for the State Bar Examination. One school indicated that it does not provide such services for any of its students. Overall, in the schools where these services were offered, the participation of students was on a voluntary basis.

We found some variation in the support services available. Eighty-five percent of the schools reported that they used student tutors and 31 percent reported using faculty tutors. Seventy-seven percent of the schools taught study and test-taking skills, while 31 percent specifically stated that they taught writing skills. Other types of assistance included:

(1) review sessions prior to the beginning of the school year;

(2) discussion groups that reviewed materials and assisted students with special problems;

(3) moot court argument;

(4) learning to think like a lawyer;

(5) coping with stress; and

(6) help with nonacademic problems.

Finally, 54 percent of the schools indicated that they had funds reserved for "special" students who required financial assistance, while 38 percent did not have

such funds.

ADMISSIONS DATA

The peak and slide of minority student enrollment (Hispanic, Black, Asian American, and other) in law schools is quite evident, as illustrated in Figure 1. Minorities made steady inreases in enrollment from the years 1970-1971 with 11 percent to 1973-1974 with 18 percent. However, after that year, we note a downward trend that remains steady at 15 percent of the total law school student population in California.

Figure 1
Percent Minority Enrollment in ABA Approved Law Schools in California
1970-1971 to 1978-1979

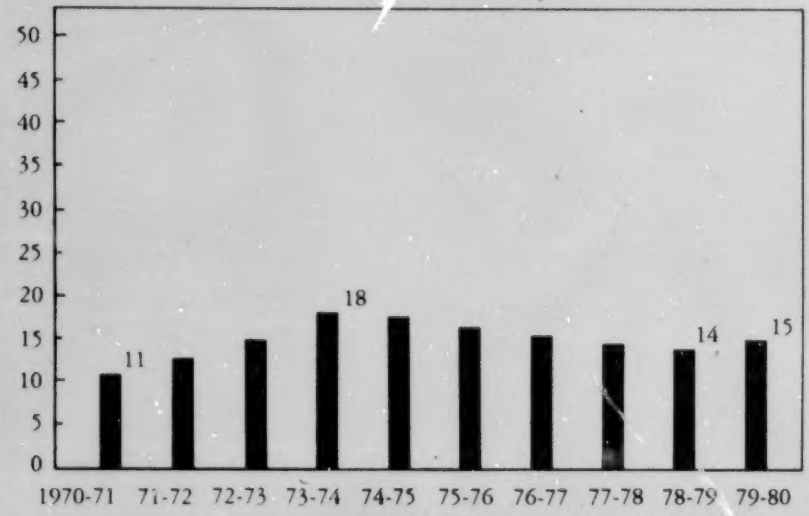


Figure 2 shows the percentage of Hispanic students of the total minority enrollment in the selected law schools in California. During 1970-1971 to 1976-1977, Hispanics made steady gains in the overall minority population, from 34 percent to 40 percent. However, in the following year, 1977-1978, they unexpectedly took a nose-dive to 31 percent. For the past two years, 1978-1979 to 1979-1980, Hispanics have slowly recovered some lost ground. It is important to note that in this ten-year period, Hispanics have not significantly increased their percentage in the overall minority student population.

POLICY CONSIDERATIONS

Although a wide variety of institutional objectives as reflected in admissions policies were listed among the schools, the following patterns emerged:

(1) ten of the schools mentioned the training of lawyers who could respond to all segments of society, including minority and low income communities;

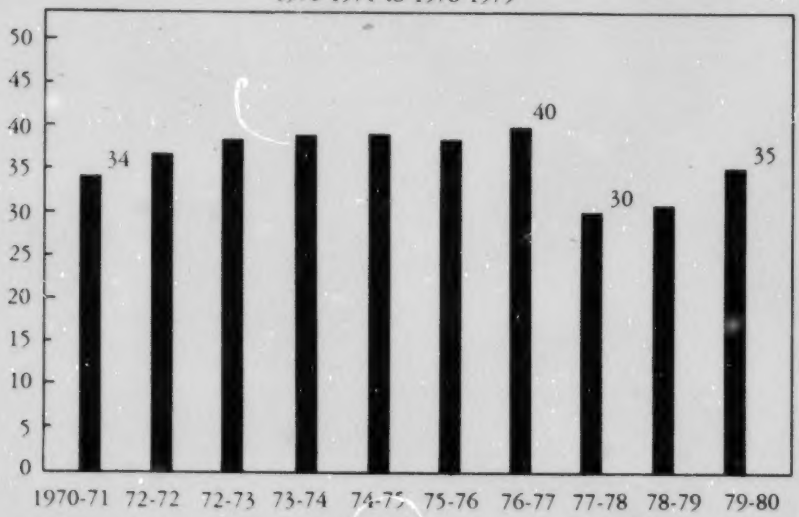
(2) four schools noted the preparation of students to pass the bar and practice law;

(3) four schools indicated development in the study of law and promotion of legal research; and

(4) three schools mentioned providing legal education to persons who demonstrated a high potential for academic excellence.

Almost all of the schools (87 percent) said that they published their institutional objectives, while only one school noted that it did not. Nine of the schools published them in administrative bulletins.

Figure 2
Percent Hispanic of Total Minority Enrollment
in ABA-Approved Law Schools in California
1970-1971 to 1978-1979



In order to ensure due process in admissions, the schools surveyed employed the following procedures:

(1) 69 percent published and disclosed to applicants the factors evaluated in the admissions process;

(2) 62 percent used internal checks and balances on voting by admissions committee members;

(3) 38 percent offered an appeal procedure for rejected applicants; and

(4) only 15 percent (2 schools) employed external audits.

ADMISSIONS PLANS SUBSEQUENT TO THE *BAKKE* DECISION

Thirty-eight percent of the respondents stated that they had distinct procedures in the screening and review process between regular and "special" applicants, while 31 percent indicated no distinctions. The following are several of the distinctions noted:

(1) "special" applicants were reviewed by a second committee;

(2) noncognitive factors were given a higher weight for "special" applicants;

(3) if a student was not accepted as as regular, he or she was defined as "disadvantaged" and given additional consideration;

(4) the student advisory group could appeal "special" students' denial; and

(5) the Director and Assistant Director reviewed minority files.

Overall, there appears to have been little change in admissions policies since the *Bakke* decision. None of the schools, for example, had eliminated "diversity" information from admissions discussions

since *Bakke*. Only two schools indicated changes in weights assigned to GPAs and LSATs for both regular and "special" applicants. One significant change, however, was found: of the four schools reporting separate review committees for regular and "special" applicants prior to *Bakke*, three had eliminated such committees since the decision. This type of a change in procedures could have a deleterious effect on minority enrollment. That is, if all applicants are reviewed by a single committee there may be a tendency to base decisions almost exclusively on GPA/LSAT scores. Moreover, if minority students learn that they will be reviewed by a single committee, they may choose not to apply. Finally, twelve of the thirteen schools indicated that they did not plan any revisions in their admissions policies for the near future.

D. DISCUSSION

Given the data, there is no reason to believe that minority enrollment, especially Hispanic enrollment, will increase in the thirteen ABA-approved California law schools analyzed in this study. This conclusion rests on the findings that admissions decisions, for the most part, are based on GPA/LSAT scores, and, as is widely known, minority applicants tend to have lower GPA/LSAT scores than their white peers. Thus, for minority students, noncognitive factors can play a significant role in their admission. Although all the schools indicated that they do take into account several noncognitive factors, admissions decisions continue to be based primarily on the traditional measures—GPA/LSAT. We therefore call attention to the pressing need to develop and implement policies that give a more equal weight to noncognitive factors.[8] Without such a change in existing policy, minority enrollment in law schools will not increase in the foreseeable future. In fact, our data suggest that minority enrollment will continue to decline.

Furthermore, although all schools indicated that they evaluate noncognitive factors in their applicant review process, we need to explore further the role of such factors. In practice, we suspect, noncognitive characteristics enter the admissions process at the second stage. That is, it may be that applicants are first reviewed on the basis of GPA and LSAT scores, and once a "qualified" pool has been established based on these criteria, the admissions committee and/or Dean of Admissions look at noncognitive factors (such as sex, ethnicity, geographical distribution, etc.) in an effort to select a more representative entering class. The problem with this type of procedure, however, is that a large proportion of minority applicants are eliminated at the initial review.

Finally, given the low socioeconomic status of minority applicants, schools and the government must continue to provide financial assistance if institutions are to attract and retain minority students. Graduate and professional programs demand full-time attention; students cannot be expected to work while enrolled in these programs. Society has the responsibility of educating promising individuals from poor backgrounds in the same way that it educates students from more wealthy backgrounds.

8. One possible policy would give equal weight to GPA, LSAT, and noncognitive factors.

V

ANALYSIS OF *THE REGENTS OF THE UNIVERSITY OF CALIFORNIA* v. *BAKKE*

As is well known, Allan Bakke, a white male denied admission to the University of California at Davis Medical School, challenged the school's special admissions program whereby only disadvantaged members of certain minority groups were considered for sixteen of the 100 places in each entering class. 438 U.S. 265 (1978). The challenge was brought under the equal protection clause of the fourteenth amendment, a provision of the California Constitution, and Title VI of the Civil Rights Act of 1964.

Although unable to reach a consensus as to the major issues, the Supreme Court affirmed in part and reversed in part. Five members of the Court, Justice Powell and the four Justices of the Stevens group, held that the California Supreme Court's judgment that the Davis special admissions program was unlawful must be affirmed.[1] In another five-to-four split, Justice Powell, joined by the four Justices of the Brennan group, held that the medical school was not precluded from according some consideration to race in its future admissions decisions, thus reversing the California Supreme Court on this issue.[2]

Because Justice Powell cast the decisive swing vote on each issue, graduate and professional schools have relied on his opinion in the formulation of their guidelines on special admissions.[3] Justice Powell, however, spoke alone on many issues, including the constitutional questions presented. It is, therefore, imperative to review briefly the opinions of other members of the Court on the two major issues before the bench.

The first holding, that a racially preferential program which sets aside an explicit quota for minorities is unlawful, is based solely on Title VI grounds. The Stevens group joined Justice Powell in invalidating the Davis program only on federal statutory grounds, determining it unnecessary to reach the constitutional issues. Nonetheless, Justice Powell provided a constitutional analysis of this issue, joined only by Justice White, expressing the view that race is a suspect classification requiring strict judicial scrutiny and the showing of a compelling state interest. Justices Powell and White found the necessity of a compelling state interest, even if the racial classification in question was assertedly benign, devoid of racial stigma, and without the intent or effect of disadvantaging a "discrete and insular" minority.

While the Brennan group joined Justice Powell in holding that a university need not be color blind in its admissions procedures and that race is one factor which may be considered in admissions

1. The "Stevens group" includes Justices Burger, Stewart, Rehnquist, and Stevens.

2. The "Brennan group" includes Justices White, Marshall, Blackmun, and Brennan.

3. See Section IV, *supra*, containing MALDEF's analysis of post-*Bakke* admissions in California based on the questionnaire responses provided by the ABA law schools in the state.

decisions, there are definite doctrinal differences between the two opinions. Justice Powell would permit the use of race-conscious actions only in four circumstances: two requiring a more complete record than Davis presented, one constitutional on its face absent the imposition of quotas, and one requiring a governmental finding of discrimination. The Brennan group, on the other hand, would permit race-conscious actions in other circumstances even absent governmental findings of discrimination, as long as they are designed to remedy the effects of societal discrimination.

Before examining Justice Powell's opinion in greater detail, a summary of his two major holdings is appropriate: (1) the use of explicit quotas for minority applicants is unconstitutional in that white applicants are excluded from consideration for the designated places solely on the basis of their race; and (2) race can be considered as one factor, as long as it is not the sole criterion, in admissions decisions designed to promote academic diversity.

Justice Powell first disposed of Allan Bakke's federal statutory claim, noting that it was unnecessary to determine whether a private cause of action exists under Title VI since the courts below had not addressed this issue. *Id.* at 283. Citing Lau v. Nichols, 414 U.S. 563 (1974) Justice Powell concluded that, "only for the purposes of this case, that respondent has a right of action under Title VI." *Id.* at 284. Observing that the language of Title VI, § 601 is "majestic in its sweep," Justice Powell also concluded that the statute proscribes only those racial classifications which would violate the equal protection clause or the fifth amendment. *Id.* at 284-287.

Subsequently, Justice Powell rejected the University's contention that preferential racial classifications should not be subjected to strict scrutiny since the respondent, a white male, was not a member of a "discrete and insular" minority. Justice Powell concluded that, "[r]acial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination." *Id.* at 291. By precluding inquiry into the factors that make a category suspect, Justice Powell based his determination that race is "inherently suspect" solely on the history of the fourteenth amendment, which he interpreted as guaranteeing personal rights. *Id.* at 289. As Justice Marshall would point out later in the opinion, the history of the fourteenth amendment is replete with incidents of individual and group discrimination against Blacks and other racial/ethnic groups. *Id.* at 387-396.

Again, it must be noted that only Justice Powell was prepared to subject admissions programs which impose some burden on white applicants to the strict-scrutiny standard. The Stevens group found the University's use of the racial classification improper on purely statutory grounds. *Id.* at 421. The Brennan group applied an intermediate level of review; as with sex-based classifications, racial classifications designed to further remedial purposes would be required to "serve important government objectives and must be substantially related to achievement of those objectives." *Id.* at 359, citing Califano v. Webster, 430 U.S. 313, 317 (1977). Thus, there was no agreement on the Court as to the proper level of judicial scrutiny in determining the constitutionality of preferential admissions programs.

Justice Powell, however, in applying the strict-scrutiny standard required the University to bear the burden of proving that, in using a racial classification, it sought to serve a "compelling" state interest and that the classification was necessary to the accomplishment of that purpose. The University, then, offered four theories of justification for its race-conscious admissions program:

V. ANALYSIS OF *The Regents of the University of California* v. *Bakke*

1. ***Increasing the number of minority students in medical school and in the medical profession.*** Justice Powell rejected this justification as facially invalid and as discriminatory per se. *Id.* at 307.

2. ***Countering the effects of societal discrimination.*** Justice Powell rejected this theory on the grounds that a state has an interest in correcting the effects of specific, identified discrimination only. *Id.* at 307. The Brennan group, on the other hand, focused their arguments on this second theory almost exclusively. In their view, a history of unequal educational opportunity renders the school's purpose of remedying the effects of generations of societal discrimination not only sufficiently important, but absolutely essential in achieving that purpose. *Id.* at 363. Implicit in this latter argument is the notion that the basis for giving racial/ethnic minorities preferential treatment is not race or ethnicity alone, but rather that members of these groups are likely to have suffered societal discrimination.

Justice Powell, however, would require a determination by a judicial, legislative, or administrative body that a university had engaged in past discriminatory practices. *Id.* at 308. According to Justice Powell, universities have no authority to make such a finding; but Justice Brennan expressed concern that requiring a determination of past discrimination would undermine efforts to achieve voluntary compliance. Presumably, pursuant to Justice Powell's view, quotas like those used at Davis would be permissible where a university has been found by a court, state legislature, or a federal agency such as the Office for Civil Rights to have discriminated in the past. [4]

3. ***Increasing the number of doctors who will serve in disadvantaged communities.*** Justice Powell noted a failure of proof on the part of the University to substantiate this contention: "there is virtually no evidence in the record indicating that petitioner's [Davis's] special admissions program is either needed or geared to promote that goal." *Id.* at 310. But Justice Powell did not foreclose the possibility that this goal may be a legitimate state objective if implemented in a racially neutral manner. He simply did not address the merits of the argument because there was no evidence in the record that Davis sought to promote such a goal, and because the preferential treatment was based solely on race. By implication, it may be constitutionally permissible to give preferential treatment to applicants, both white and minority, who express an interest in providing professional services to disadvantaged communities. Use of this criterion could also promote academic diversity, as discussed *infra*.

4. ***Promoting racial and ethnic diversity in the student body.*** Finally, Justice Powell observed that the goal of obtaining the benefits which flow from an ethnically diverse student body is constitutionally permissible in view of the first amendment's special concern for academic freedom. He thus concluded that the University's fourth proffered justification theory indeed constituted a compelling purpose. *Id.* at 311-312. Furthermore, the Justice noted that other admissions programs—notably Harvard's—sought to achieve educational diversity by taking race into account as only one of many factors. *Id.* at 316.[5]

4. U.S., Department of Health, Education, and Welfare, Office for Civil Rights, Office of the Secretary, "Nondiscrimination in Federally Assisted Programs, Title VI of the Civil Rights Act of 1964—Policy Interpretation," *Federal Register* 44, no. 197, (10 October 1979) pp. 58509-58511. Also available through the Office for Civil Rights, mimeograph, pp. 1-11. See discussion *infra*.

5. Arguably, Justice Powell would permit a university to demonstrate the compelling nature of the benefits derived from diversity by a less strict strict-scrutiny review. See Kenneth L. Karst and Harold W. Horowitz, "The *Bakke* Opinions and Equal Protection Doctrine," 14(1) Harv. C.R.-C.L. L. Rev. 7-12 (Spring 1979).

The effect of Justice Powell's opinion was to make the educational institutions themselves, and not members of minority groups who had actually suffered societal discrimination, the true beneficiaries of affirmative action. Justice Powell's holding on diversity is dominated by his concern for the individual. He emphasized repeatedly that the equal protection clause protects the individual and that Allan Bakke should have been evaluated by the admissions committee on his individual characteristics. The fatal flaw in the Davis admissions plan, from Justice Powell's perspective, was its disregard for individual rights. *Id.* at 320. He also noted that Davis's use of a fixed number of seats insulated special applicants from competition and precluded individual consideration for members of the nonpreferred group. *Id.* at 315-316. The Harvard program was commended because it gave racial preference within the framework of individual consideration. *Id.* at 318.

Justice Powell's emphasis on diversity and individual consideration fairly clearly indicates that he would favor (1) a multitrait evaluation of an applicant, and (2) a one-pool admissions process as opposed to insulated tracks. With this type of admissions system, an applicant possessing a desired trait, including ethnicity, would receive a "plus" on his or her application. The Justice's encouragement of use of a wide "range of factors" would certainly permit a school to evaluate noncognitive traits in addition to the LSAT and GPA index of an applicant.

All of the following factors could be relevant to the goal of promoting diversity: geographic origin, socioeconomic disadvantage, work experience, extracurricular interests, history of overcoming disadvantage, bilingualism, ability to communicate with the poor, prior lack of educational opportunity, evidence of surmounting extreme hardship, motivation, and perseverance. Use of these additional characteristics for evaluative purposes will increase the likelihood that a minority applicant, who may appear less qualified on purely objective criteria, will receive a more individualized evaluation of his or her potential to become a successful attorney. Certainly, all applicants, minority or nonminority, should be entitled to an assessment of their ability to study law based on multiple criteria rather than several limited measurements.[6]

Individualized applicant evaluation based on multiple criteria is preferable to a system that distributes a single unit or "plus" to all minority applicants without further inquiry. The former approach not only facilitates comparisons between minority and white applicants, but also ensures that minority applicants will be compared with each other on the basis of the additional criteria. This approach recognizes the diversity within each group and the fact that some individual members of the group may demonstrate more perseverance, motivation, and ability to overcome personal disadvantage than other members of the same group.

Inescapably, the goals of promoting diversity and making accurate individual assessments of applicants require identifying individuals as members of groups and giving some weight to the factor of past discrimination, at least on a personal, if not a societal, level. In this context, it is not certain whether Justice Powell's approach will produce a result significantly different than that practiced at Davis. Justice Brennan stresses that Justice Powell's approach differs only in that it does not make public the extent of the racial preference accorded. Nonetheless, Justice Powell points out that under his approach there is no "facial intent to discriminate." *Id.* at 318. Justice Powell took care to quote former Justice Frankfurter to the

6. Manning, "The Pursuit of Fairness in Admissions to Higher Education," p. 38.

effect that "[j]ustice must satisfy the appearance of justice;" he further noted that programs such as that of Davis, "will be viewed as inherently unfair by the public." *Id.* at 319 n. 53.

While rejecting the justification theories proffered by the University as insufficiently compelling, Justice Powell did note that, "[r]acial classifications in admissions conceivably could serve a fifth purpose, . . . fair appraisal of each individual's academic promise in the light of cultural bias in grading or testing procedures." *Id.* at 306 n. 43. The merits of this argument were not discussed because there was nothing in the record to indicate that the Davis program was formulated to address possible test bias. Thus, Justice Powell's opinion does not preclude the use of alternative criteria when the predictive value of standardized tests for minorities is at issue.[7]

In conclusion, the *Bakke* decision permits and encourages a broader assessment of applicant traits than the traditional predictors of GPA and LSAT, even if the opinion is read in the narrowest possible light: that student diversity, including racial and ethnic diversity, is the only constitutionally permissible ground for increasing the numbers of racial/ethnic minorities enrolled in professional schools. Indeed, Justice Powell's opinion, by its emphasis on the multitude of characteristics which can and should be used in evaluating professional school candidates, goes far in erasing the simplistic concept of what consitutes a "qualified student." *Bakke*, in conjunction with caveats issued by the admissions test makers and psychometricians, presents a moral mandate that admissions plans avoid placing undue reliance on objectified criteria to the exclusion of an individualistic appraisal of each applicant.[8]

The newly released Department of Health, Education, and Welfare policy interpretation on the effect of *Bakke* on Title VI lends further credence to the idea that universities, if recipients in any manner of public moneys, have an affirmative obligation to evaluate all applicants by criteria which are not only individually fair, but also equitable to racial/ethnic groups.[9] The guidelines promulgated by HEW encourage institutions of higher learning which receive federal financial assistance to undertake affirmative action in admissions voluntarily in order to overcome past conditions which have resulted in low participation by racial/ethnic groups.

Although not advocating use of quotas in the absence of a specific judicial, legislative, or administrative finding, including a finding by the Office for Civil Rights, of past discrimination, the regulation permits and encourages an institution's voluntary efforts to:

> (1) Consider race, color, or national origin as a positive factor, with other factors, such as geographic or economic circumstance, in selecting from among qualified candidates. The relative weight granted to each factor is properly determined by institution officials; *race, color or national origin may be accorded greater weight*

7 See *Larry P.* v. *Riles*, Section III, Part B, footnote 16, *supra*

8 "Cautionary Policies Concerning Use of the LSAT," pp. 3-4.

9 The policy interpretation states: "Title VI of the Civil Rights Act of 1964 prohibits institutions of higher education that receive or benefit from Federal financial assistance from discriminating against applicants for admission on the basis of race, color, or national origin. The primary purpose of the statute was to eliminate widespread discrimination against blacks and other minorities in federally-assisted programs. Accordingly, the Department's Title VI regulation requires recipients of Federal financial assistance, when found to be discriminating, to end any current discrimination and to take affirmative action to overcome the effects of past discrimination." HEW, "Nondiscrimination Policy Interpretation," p. 3.

than other factors; [emphasis added]

(2) Recruit, or increase recruiting, in predominantly minority institutions and communities;

(3) Modify admissions criteria for minorities if it determines that it is necessary for a fair appraisal of the academic promise of minority applicants. This may be appropriate to cure established inaccuracies in predicting performance where an institution can demonstrate that traditional admissions criteria are not predictive of success for minority students;

(4) Offer special services, including summer institutes and special tutoring services, to assist educationally and socially disadvantaged students in meeting admissions requirements. Students may not be excluded from these programs on the basis of race, but race may be considered as a factor in selecting participants; and

(5) *Establish and pursue numerical goals to achieve the racial and ethnic composition of the student body it seeks through techniques such as those listed above.*

In addition to the foregoing techniques, institutions may use their authority to broaden admissions criteria generally to evaluate better the qualifications of minority applicants. This may be accomplished by giving increased consideration to an applicant's character, motivation, ability to overcome economic and educational disadvantage, work experience, and other factors. [emphasis added][10]

Consistent with the constitutional parameters delineated by the *Bakke* decision, *supra*, and the clearly expressed intent of the newly promulgated HEW policy interpretation of Title VI as affected by *Bakke*, the models which follow offer concrete vehicles for increasing minority access to legal education.

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10 Ibid., pp. 5-7. Note also that proposed New Standard 212 of the "ABA Standards for the Approval of Law Schools" is philosophically consistent with the HEW "Nondiscrimination Policy Interpretation." It would require certain affirmative action efforts within the ABA-approved law schools as a further requirement of their accreditation.

VI

ALTERNATIVE ADMISSIONS MODELS

There is no argument against the logic that Blacks and whites who seek to master the same professional discipline must each develop the same body of skills and understandings. What is argued is that the disposition to learn them (aptitude) may be r. easured differentially with respect to group membership, and this should be considered in selection.

Open affirmative action programs have no need to apologize for using tests as only one part of a selection process. In order to develop a program of fair selection, the weaknesses of employing a purely psychometric basis for selection must be recognized and dealt with squarely. No apologies need be made for including relevant dimensions in the selection process.

Selection instruments need not be discarded, because they are found wanting. The same argument presented here in assessing tests could be repeated for any arbitrary procedure based on comparing an individual to group performances. *The solutions are not psychometric; they are social policy decisions, but they can be made more difficult by psychometric misunderstandings.* [emphasis added] Psychometricians can give us useful tools, but they must not be misused. This does not absolve test constructors of responsibility. They should be spending as much time and money assisting selectors for schools and employment in using other predictors as they do in developing tests. In fairness to all, affirmative action has the potential to enrich our society with the contributions to many areas which have too long stood dry from healthy infusion of a diverse racial and sexual populace.

From Johnson, *The Measurement Mystique*, pp. 47-48.

INTRODUCTION

The alternative law school admissions criteria which follow focus on a deemphasis of the LSAT as an evaluator of law school potential with an accompanying emphasis on other factors which have been shown to be indicative of success in legal studies, as well as constitutionally permissible. The advocated models recognize the unique character of each law school and should be evaluated and implemented as appropriate in each individual institution while also satisfying the constitutionally permissible and morally compelling goal of increasing access for minority law students.[1]

1. In *Bakke* Justice Powell stated: "No such facial infirmity [intent to discriminate] exists in an admissions program where race or ethnic background is simply one element—to be weighed fairly against other elements in the selection process. . . . And a court would not assume that a university, professing to employ a facially nondiscriminatory admissions policy, would operate it as a cover for the functional equivalent of a quota system. In short, good faith would be presumed in the absence of a showing to the contrary." The Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 318-319 (1978).

HEW issued the following interpretation of the effect of the *Bakke* decision on Title VI of the Civil Rights Act of 1964. In essence, HEW's interpretation encourages educational institutions "to continue and expand voluntary affirmative action programs to increase their enrollment of minority group members. . . ." Although the interpretation notes that institutions may not set aside a fixed number of places for

Moreover, the following models are not mutually exclusive one from the other, but rather may be combined and tailored to the stated institutional objectives of each school. As discussed in Section III, *supra*, the alternative criteria are structured around the pedagogically sound premise that standardized tests, in general, and the LSAT, in particular, measure only one set of cognitive skills out of the many that are necessary to become a competent attorney.[2] As the Carnegie Council of Policy Studies in Higher Education stated:

> Grades and tests looked at together are more predictive of subsequent academic performance than grades alone or tests alone. More generally, Torsten Husen (1976) has noted that: "Extensive empirical research tells us that at most half of individual differences in educational attainments are attributable to purely intellectual factors. The rest may be attributed to motivation, interest, perseverance, health, and, of course, home background." . . . Some of these other factors, however, have proven difficult to assess prior to admission. These other factors also, of course, affect earlier grades and entrance test scores.[3]

For minority students it is questionable whether a combination of tests and grades is more predictive than grades alone.[4] Irrespective, minority test scores cannot be divorced from the economic and cultural background of the examinee.

The following alternative criteria are also presented within a sociological context which acknowledges the necessity of a critical mass of minority students in a given institution not only to approach population parity but to guarantee the optimal performance of minority candidates.[5] For example, studies conducted on

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minority students absent a judicial, legislative, or administrative finding of past discrimination, the guidelines expressly permit, "consideration of race, color, or national origin among the factors evaluated in selecting students, increased recruitment in minority institutions and communities; *use of alternative admissions criteria when traditional criteria are found to be inadequately predictive of minority student success*; [emphasis added] provision of preadmission compensatory and tutorial programs; and *the establishment and pursuit of numerical goals to achieve the racial and ethnic composition of the student body the institution seeks*." [emphasis added]

The guidelines further state that, in addition to these techniques, "institutions may use their authority to broaden admissions criteria generally to evaluate better the qualifications of minority applicants . . . by giving increased consideration to an applicant's character, motivation, ability to overcome economic and educational disadvantage, work experience, and other factors." HEW, "Nondiscrimination Policy Interpretation," pp. 58509-58511.

2. Fuller and McNamara state: "Leona Tyler's (1978) review of research and philosophy on individual psychological differences provides a broad view of human skills related to, yet distinct from competence in processing information. For example, 'field-dependent' individuals, who may be less able to reduce a problem to its component parts, may be more competent to work in small groups rather than alone. Evidence also indicates that those most proficient at solving problems with one 'right' answer, for example, questions on standardized tests, may be less able to think divergently, creatively hypothesizing alternative approaches to a problem (Frederiksen, 1978). In the rush to rank applicants by their competence at processing information, other individual differences that could nurture greater diversity among students within professions are ignored." Bruce Fuller and Patricia P. McNamara, "Defining and Assessing Disadvantagement," *Admitting and Assisting Students After Bakke*, ed. Bruce Fuller and Kenneth C. Green (San Francisco: Jossey-Bass, Inc., 1978), p. 68.

See also University of California Task Force Report, September 1977, p. 40.

3. "Public Policy and Academic Policy," *Selective Admissions in Higher Education*," p. 10 & n. 5.

4. Astin, "Quantifying Disadvantagement," p. 75.

5. Eve Spangler, Marsha A. Gordon, and Ronald M. Pipkin, *Token Women: An Empirical Test of Kanter's Hypothesis*, Law Student Activity Patterns Project of the American Bar Foundation (Chicago: University of Chicago, 1978), reprinted from *The American Journal of Sociology*, vol. 84, no. 1 (July 1978), pp. 160-170.

women in law school indicate that women law students when enrolled in proportionally small numbers within a predominantly male student body either overachieve or settle for very mediocre academic performance. The same studies, however, demonstrate that women tend to distribute themselves evenly along the range of academic performance with other students when enrolled in more than token numbers.[6] Thus, it is suggested that for minority law students to reach their true potential in legal studies, their numbers must allay possible feelings of isolation and alienation.[7]

With these considerations in mind, the following alternative criteria are offered to law school deans, professors, admissions officers, students, and shapers of public policy for their serious consideration. It must be reiterated that the following admissions models, just as every existing admissions model now in use in law schools, contain an implicit or explicit policy decision. Since the LSAT is not a perfect instrument for selection, law schools consider a variety of other criteria. Thus, admissions decisions are currently made not only on the basis of minute yet seemingly significant differences in predicted first-year law grades, but also on a consideration of a diverse set of noncognitive characteristics.[8] Our models seek to effectuate a policy of greater diversity and integration within the legal profession by suggesting other indices for selection apart from GPA and LSAT.[9]

Although our models are not necessarily predictive of first-year success in law school in the same way as traditional admissions indices, they assist in a more complete assessment of law school candidates. By definition, the advocated models are not finished admissions procedures that can be used without further test-piloting and subsequent revision. Rather, our models are specific, concrete approaches, with directions for implementation, that law schools will need to review closely and test before the models can be fully adopted.

A. CULTURAL DIVERSITY MODEL

RATIONALE OF THE DIVERSITY MODEL

The cultural diversity model directly responds to and satisfies the constitutional import of *Bakke*. As Justice Powell observed:

> Thus, in arguing that its universities must be accorded the right to select those students who will contribute the most to the "robust exchange of ideas," petitioner invokes a countervailing constitutional interest, that of the first amendment. In this light, petitioner must be viewed

6. Ibid.

7. Green and McNamara observe: "The rarity of minority students and faculty members on a campus, let alone within a department or professional school, contributes to this feeling of alienation and isolation experienced by minority students. Says one black law student, 'You do feel isolated because there are so few black students. And I guess you become somewhat angered because you know that there are more qualified black students out there who could just as well be here.' " Kenneth C. Green and Patricia P. McNamara, "The Student Experience," *Admitting and Assisting Students After Bakke*, ed. Bruce Fuller and Kenneth C. Green (San Francisco: Jossey-Bass, Inc., 1978), p. 32.

8. See Section IV, *supra*, for an analysis of MALDEF's survey instrument distributed to all ABA-approved law schools in California.

9. In advocating alternative criteria, MALDEF recognizes that some of the suggested alternatives would require a greater financial and time commitment on the part of law school admissions officers, committees, faculties, and deans than exists presently. Notwithstanding, one can legitimately ponder why the medical schools have been willing to make that additional commitment toward an individualized selection process when many law schools have not.

> as seeking to achieve a goal that is of paramount importance in the fulfillment of its mission.[10]

Not only is diversity a compelling constitutional interest, but the diversity formula set forth in this model capitalizes on the established admissions procedures and student composition of each law school, thereby according utmost deference to traditional university autonomy while satisfying first amendment rights.

Further, the cultural diversity model recognizes and resolves the perplexing fact that diversity, in the sense of meaningful racial and ethnic diversity, will not exist in the absence of admissions models which expand from the traditional cognitive criteria of GPA and LSAT. Franklin Evans of the Educational Testing Service documented that:

> If the nation's law schools were to adopt an admissions policy taking no account of minority backgrounds of blacks and Chicanos, a majority of the students from those groups now admitted and enrolled would be excluded. . . . If numerical predictors were employed exclusively for all applicants, the resulting reductions would be 76 to 78% for blacks and 45 to 48% for Chicanos.[11]

Yet there is no statistical, constitutional, or moral reason to limit admissions criteria to strictly numerical indices. On the contrary, the studies cited in Section III, *supra*, indicate that cognitive scores are likely to be misused against all applicants if isolated from other relevant candidate data.

This diversity model provides other relevant factors for applicant evaluation. It has the important feature of adjusting the weight accorded to an applicant's cultural diversity on the basis of the racial/ethnic enrollment in that particular institution. Applicants who are underrepresented will automatically receive more weight on the cultural diversity part of the formula than will candidates who are already well represented at the law school. Thus, the "robust exchange of ideas" which Justice Powell found compelling will be achieved without quotas and within the framework of a formula which is relatively simple and administratively feasible. Moreover, this model, by virtue of its noncognitive component, encompasses diversity characteristics apart from race and ethnicity.

DESCRIPTION

The purpose of this model is to provide a systematic procedure focusing on noncognitive admissions characteristics which research demonstrates may be useful in evaluating candidates for graduate and professional schools.[12] Although these

10. The Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 313 (1978).

11. Evans, "Applications and Admissions to ABA Accredited Law Schools," pp. 566-567. See also Section III, *supra*.

12. The above model was developed by Dr. William E. Sedlacek. Dr. Sedlacek is one of the leading researchers in the formulation of noncognitive variables which have been shown to be indicative of minority success in higher education. His work includes: C. M. Pfeifer, Jr. and W. E. Sedlacek, "Nonintellectural Correlates of Black and White Students' Grades at the University of Maryland," *Cultural Study Center Research Report #3-70* (College Park, Maryland: University of Maryland, 1970); C. M. Pfeifer, Jr. and W. E. Sedlacek, "Predicting Black Student Grades With Nonintellectual Measures," 43 J. Negro Educ. 67-76 (1974); C. M. Pfeifer, Jr. and W. E. Sedlacek, "The Validity of Academic Predictors for Black and White Students at a Predominantly White University," 8 J. Educ. Measurement 253-261(1971); and D. O. Prieto, P. G. Bashook, A. G. D'Costa, P. R. Elliott, R. K. Jarecky, B. Kahrahrah, W. F. Leavell, and W. E. Sedlacek, *Simulated Minority Admissions Exercise Workbook* (Washington, D.C.: Association of American Medical Colleges, 1978), pp. 1-33.

Other researchers whose work supports that of Dr. Sedlacek are: A. R. Baggaley, "Academic Prediction at an Ivy League College, Moderated by Demographic Variables," *Measurement and Evaluation in Guidance*, 6 (1974): 232-235; F. H. Borgen, "Able Black Americans in College: Entry and Freshman Experiences," *Merit Scholarship Corporation Research Reports*, 6, no. 2 (1970); R. D. Goldman, "Hidden

characteristics are particularly relevant to minority candidates, they can be used as criteria to gain additional information on all applicants.[13]

The elements of our cultural diversity model are expressed by the following formula:

> [NC (noncognitive) score + C (cognitive) score] x CD (cultural diversity) score = AS (applicant score)[14]

This formula describes a procedure for law student selection which gives weight to cultural diversity based on the existing racial/ethnic composition of a particular law school and, hence, increases the chance of minority student selection. Moreover, the criteria are keyed to the philosophy that excellence in education is promoted when a critical number of individuals with varying characteistics are recruited for professional school preparation.[15]

As designed, the cultural diversity formula may be implemented in one of two ways. Pursuant to a unitary admissions approach, the formula may be applied to every law school applicant to a particular institution. In the alternative, a predetermined percentage of students may be admitted under the existing criteria of a law school with the remaining applicants being evaluated on the basis of the noncognitive and diversity factors which follow.

Dr. William E. Sedlacek, developer of the model, suggests that, for administrative reasons, 50 percent of law applicants to a particular school be admitted under the school's established criteria. This percentage, of course, could be adjusted by any school, in keeping with the HEW guidelines on Title VI, according to its own numerical targets and/or prior experience in minority enrollment.[16] If 50

Opportunities in the Prediction of College Grades for Different Subgroups," 10 J. Educ. Measurement 205-210 (1973); F. Perry, Jr., "Selected Variables Related to Academic Success of Black Freshman Students at the University of Missouri—Columbia," (Ph.D. diss., University of Missouri, Columbia, Missouri, 1972); and G. Temp, "Validity of the SAT for Blacks and Whites in Thirteen Integrated Institutions," 8 J. Educ. Measurement 245-251 (1971).

13. The theoretical framework underlying the use of noncognitive variables in admissions decisions is based on research which indicates that the GPA and LSAT are incomplete instruments on which to make a full evaluation of a candidate, especially a nontraditional applicant. See Section III, Part B, footnotes 7-12, *supra*.

Moreover, studies support the proposition that if traditional predictors are used, there must be separate equations or cutoffs for each subgroup to achieve optimum validity. Other studies supporting the differential regression equations for race/sex subgroups include: A. S. Farver, W. E. Sedlacek, and G. C. Brooks, Jr., "Longitudinal Predictions of University Grades for Blacks and Whites," *Measurement and Evaluation in Guidance*, 7 (1974): 243-250.

14. As used in this formula, the symbols connote the following: NC represents the noncognitive score, C represents the cognitive score (GPA and LSAT) with CD representing the cultural diversity score. AS denotes the total applicant score on the basis of which offers are made.

15. "As noted in Justice Powell's opinion in *Bakke vs. University of California* [*sic*], '. . . we do not compel the University to utilize only "the highest objective academic credentials" as the criterion for admission.' Institutions do in fact select students at least in part on a variety of other grounds. For example, institutions routinely consider nonacademic characteristics in order to:

—select students likely to exhibit outstanding performance on criteria other than traditional grades (e.g., leadership, scientific creativity, artistic achievement)
—select students who are more likely to persist to a degree
—achieve reasonable representation of important demographic groups (e.g., sex, race)
—select students who are related to important sources of support to the institution (e.g., relatives of alumni, faculty, or benefactors)"

Hunter M. Breland and Warren W. Willingham, "Personal Qualities in Admissions," mimeographed, a cooperative research and development project between the College Board and the Educational Testing Service (Princeton, N.J., December 1978), pp. 5-6.

16. See Section V, *supra*, for the HEW "Nondiscrimination Policy Interpretation," governing the interpretation of Title VI in light of *Bakke*.

percent were admitted traditionally, then the remaining 50 percent would be chosen based on the above formula which seeks to foster true diversity in entering law classes. Although the cultural diversity and noncognitive components of the formula may be adjusted by different schools based on their test-pilots of the model, the essential procedure for implementation is as follows:

IMPLEMENTATION PROCEDURE

1. Select 50 percent of the entering class using traditional methods (GPA, LSAT, letters of recommendation, etc.). In the alternative, omit this step and evaluate all applicants as detailed in steps 2 through 5.

2. Develop a composite score for all applicants, or the remaining 50 percent, on the following eight noncognitive variables. These variables are scored on a scale of 1, 2, or 3 points, with 3 being the highest. Data to achieve scores may be obtained from letters of recommendation, personal statements, interviews, etc. They are variables which admissions personnel and committees must scan for, since they could be contained anywhere in the applicant's record. All are supported with research as to their utility, particularly for racial/ethnic groups, but for whites as well.[17]

a. Noncognitive variables:

1. Self-concept.
2. Realistic self-appraisal.
3. Understanding racism.
4. Long-range goals.
5. Availability of a strong support person.
6. Leadership.
7. Community service.
8. Demonstrated legal interests.[18]

b. The highest score obtainable is 8 x 3 = 24, while the lowest is 8 x 1 = 8. Since there eight traits with a maximum value of 3 points per trait, a score of 24 would be the maximum while 8 would be the minimum because each applicant receives at least 1 point per trait. Develop a distribution of these scores for all candidates, or the remaining 50 percent, and convert these scores into T scores which have a mean of 50 and a standard deviation of 10. A T score is merely a statistical method for equating scales which are not equivalent.[19] The resulting score, in this component of the formula, is called the NC or noncognitive score.

3. Develop a distribution of the remaining applicants based on the traditional cognitive variables (GPA and LSAT) used by an institution in ranking and selecting admittees. This distribu-

17. William E. Sedlacek, "A Cultural Diversity Selection Model for Law School Admissions," prepared for the Mexican American Legal Defense and Educational Fund, mimeographed (College Park, Maryland: University of Maryland, 1 October 1979).

18. Studies corroborate the utility of these factors for student assessment; see footnote 12, *supra*. Please refer to Addendum A which immediately follows this model for a description of the weighting of the scale values for each of the components making up the noncognitive score.

19. T score is a standardized score where the mean is set at 50 and the standard deviation is 10. For instance, applicant A had a GPA of 3.6. If the pool of applicants to a particular school had a mean GPA of 3.3 with a standard deviation of 0.2, we would set 3.3 equal to 50 and each unit of 0.2 above or below the mean equal to 10. Thus a GPA of 3.5 would equal a T of 60, a GPA of 3.1 would equal a T of 40, and a GPA of 3.6 would equal a T of 65; a GPA of 3.6 would be 1.5 standard deviations, or 0.3 above the mean, so 3.3 + 0.3 = 3.6. T scores allow for scores based on different scales to be compared, added, subtracted, etc. The scoring system employed by many standardized tests such as the SAT and the LSAT is similar to the T score in that the mean is set at 500 and the standard deviation at 100. A more complete discussion of T scores can be found in F. G. Brown, *Principles of Educational and Psychological Testing*, 2nd ed. (New York: Holt, Rinehart and Winston, 1976).

tion, as discussed previously, will contain either all candidates or the remaining 50 percent of the applicants after the first 50 percent were admitted pursuant to established criteria. The goal is to develop a distribution based on a single composite ranking of the cognitive variables for each applicant. This distribution, as the noncognitive distribution, will be converted into T scores and will represent the C or cognitive score. For hypothetical examples of conversions of student GPAs, LSATs, and noncognitive traits into T scores, please refer to Addendum B at the end of this part.

4. Depending on the admissions formula chosen by the institution, cultural diversity scores will be assigned to all students or to those remaining after a specified percentage were admitted by the existing criteria of a law school. For a cultural diversity score to be assigned, however, there must be some external norm against which the weight of the score is determined; this is so because the purpose of the diversity model is to automatically adjust the weight each racial/ethnic group receives in evaluation for admission based on the representation of that particular group in a specific law school. The model, therefore, facilitates law school access to those groups least represented in a given law school by assigning them a higher cultural diversity score.

The HEW "Nondiscrimination Policy Interpretation," on Title VI as discussed in Section V, *supra*, permits a university to establish a numerical target for ethnic/racial minority admissions. Certainly a law school could use some numerical target or even last year's actual enrollment, as broken down by race and ethnicity, to establish a benchmark against which to measure applicants for cultural diversity. Cultural diversity scores then, are calculated as follows:

Institutional Composition	CD score (multiplier)
Less than 10 percent of the applicant's racial/ethnic group is represented (a) in the 50 percent of the class already admitted under established criteria or (b) in the student body of a particular law school or (c) by some other numerical target used as a benchmark for assigning cultural diversity scores.	1.5
Between 11 and 50 percent is represented.	1.25
More than 50 percent is represented.	1.0

5. Final selection is made pursuant to the following formula:

a. (NC score + C score) x CD score = AS

b. Those individuals with the highest applicant scores are selected for admission.

CONCLUSION

The cultural diversity model is inherently fair in that every applicant is compared against every other applicant on the basis of cognitive, noncognitive, and cultural diversity traits. If the model is not applied to all applicants, it is still fair since every applicant not admitted pursuant to the traditional criteria of the law school must compete individually with every other applicant not admitted by the established criteria. The criteria utilized in this model, moreover, are indisputably within the letter and spirit of *Bakke*, as articulated by Justice Powell, in that applicants are assessed on a multitude of traits in an effort to achieve true diversity within the law school. Cultural diversity is not assigned a fixed weight nor is it implemented by arbitrary quotas. Rather,

applicants are individually evaluated for cultural diversity, among other traits, based on the specific cultural composition of the law school to which they are applying. Finally, the cultural diversity component of the model is adjusted automatically in the admissions process according to the percentage of particular racial/ethnic groups already represented in the institution.

ADDENDUM A TO SECTION VI, PART A

Below is a description of the weighting of the scale values for each of the components that make up the NC score.

1. Positive Self-Concept

(Strong self-feeling; strength of character. Determination, independence.)

Meaning	Code (Points)
Initiates statements or behaviors that indicate strong positive feelings about oneself, e.g., "I felt I could do well on a project so I took extra initiative." Took heavy course-loads in school. Willingness to try new things over a long period of time.	3
Some evidence of positive feelings or behaviors but not strong. Some good evidence, some bad. Does *not* take initiative in trying new things or presenting evidence of self-worth; or only recent evidence of good self-concept.	2
Shows no evidence of good self-concept or negative evidence. No evidence of trying new things; statements of expected failure made.	1

2. Realistic Self-Appraisal

(Especially academic. Recognizes and accepts any deficiencies and works hard at self-development. Recognizes need to broaden his/her individuality.)

Meaning	Code (Points)
Presents clear evidence of assessing shortcomings in his/her background and *has taken steps* to overcome. Could be curricular or personal, e.g., "I knew that I was short in math so I took an extra course." "I *was not* effective in dealing with colleagues so I sought them out for reasons why."	3
Some recognition of some shortcomings but has generally not taken action to correct.	2
No evidence that shortcomings recognized; defensive or avoids questions concerning possible problem. Covers up and offers excuses.	1

3. Understands and Deals With Racism

(Realist based on personal experiences of racism. Is committed to fighting to improve existing system. Not submissive to existing wrongs, hostile to society, or a "cop-out." Able to handle racist system.)

Meaning	Code (Points)
Initiates realistic explanations of how racism (particularly institutional racism) affects life. Not bitter. Understands that *some* of his/her life is controlled by the system based on race or sex and some is individually determined. Evidence of	3

successfully handling interracial and/or intersexual situations, e.g., "I expect that some people may not understand modern women, but I had one supervisor who came around after I let him know what I could do."	
Some good evidence, some not so good or tentative. Not a full understanding. May be bitter or confused.	2
No understanding of racism, hostile, resentful. Blames everything on the system being against Hispanics, Blacks, etc., if a minority. Feels resentful of reverse discrimination if white. No demonstrated method of handling interracial or intersexual situations well.	1

4. Prefers Long-Range Goals to Short-Term or Immediate Needs

(Able to respond to deferred gratification.)

Meaning	Code (Points)
Consistent evidence of planning and future orientation over a long period, e.g., "As a freshman, I figured I had better study if I wanted to get into law." "I realized I had to learn X procedure on the job before I could get promoted."	3
Some recognition of long-term goals but no long-term evidence, or mixed evidence.	2
No evidence of long-term planning; looks at issues in immediate terms, unprepared for future.	1

5. Availability of Strong Support Person

(To whom to turn in crises.)

Meaning	Code (Points)
Someone has provided assistance in times of crisis. Generally same person or one at a time sequentially, e.g., grandmother, then teacher, then boss, etc. Knows where to go in a crisis.	3
Sometimes has received help but not consistently; somewhat unclear about where to go in crisis.	2
No evidence of turning to others, loner, tough it out. Then says no problem.	1

6. Successful Leadership Experience

(In any area pertinent to background, e.g., gang leader, sports.)

Meaning	Code (Points)
Behavioral evidence of influencing others in the context of his/her cultural or socialized background (may not be traditional, e.g., gang leader, unusual hobby, or community work). Has shown evidence over a period of time.	3
Some evidence of leadership position. Not clear what his/her influence really was, may list offices held in student or other organization.	2
No evidence of influencing others or holding office.	1

May avoid or be uncomfortable in leadership role, e.g., "Let others do it—I'm too busy."	

7. Demonstrated Community Service

Meaning	Code (Points)
Behavioral evidence of activity and identification with community. Long term involvement and interest. Community must be allowed to be cultural/racial as well as geographical.	3
Some contacts with community but may be just recent, or perhaps, more likely, in the past with an uncertain present and future.	2
No contact with community. Little or no evidence that he or she is aware of the concept or its importance. Alienated, separated from cultural/racial background.	1

8. Demonstrated Legal Interests

Meaning	Code (Points)
Behavioral evidence of activity and interest in the law and legal issues for some time. Interest may be through one's culture, bettering one's culture through the law, etc. Allow for non-traditional views of legal interest.	3
Some behavioral evidence of legal interests but not strong or long term.	2
No evidence of interest in the law or legal issues, or perhaps avoidance of such issues.	1

ADDENDUM B TO SECTION VI, PART A

Applicant A

Description: White, high grades and LSATs but not involved in activities. Shows performance in traditional ways in classroom.

GPA = 3.6 = T score of 65
LSAT = 750 = T score of 75

Computation of C score:
The school evaluating Applicant A weights GPA 50% and LSAT 50%. Thus we can simply get the mean of the two T scores $(65 + 75) \div 2 = 70$. (C = 70)

Computation of NC score:
Applicant A scored as follows on the eight noncognitive variables making up the NC score:

Self-concept = 2
Realistic self-appraisal = 2
Understands racism = 1
Long-range goals = 2
Strong support person = 1
Leadership = 1
Community = 1
Demonstrated legal interests = 3

The sum of these eight scores is 13. If we compare this to a distribution of these scores from all applicants to the school, we get a T score of 40 or 1 standard deviation below the mean. This person would be at the 16th percentile, or the lowest 16% of the applicants on NC. (NC = 40)

Computation of CD score:
Based on applicant's race applicant receives a 1 for being in a group that represents more than 50% of the applicants. The reference group here could be the current year's applicants, last year's admittees, residents in the area, etc. The weights assigned to cultural/racial groups as of this date are: 1 = more than 50% represented; 1.25 = 11 to 50% represented; 1.5 = 10% or less represented. (CD =

1)

Computation of applicant score (AS):
AS = (70 + 40) x 1 = 110

Applicant B

Description: Chicano, average LSAT and grades, but shows good performance in many areas outside the traditional educational setting.

GPA = 2.9 = T score of 45
LSAT = 450 = T score of 38

Computation of C score:
The scores for GPA and LSAT are based on the applicant pool of the school involved. The school evaluating Applicant B weights GPA two-thirds and LSAT one-third. Thus, C = (45 + 45 + 38)÷3 = 42.67.

Computation of NC score:
Applicant B scored as follows on the eight noncognitive variables making up the NC score:

Self-concept = 2
Realistic self-appraisal = 2
Understands racism = 3
Long-range goals = 3
Strong support person = 2
Leadership = 2
Community = 3
Demonstrated legal interests = 2

The sum of the noncognitive variables is 19. If we compare this score to a distribution of these scores from all applicants we get a T score of 66 for the NC component. (NC = 66)

Computation of CD score:
There were 11-50% Chicanos in the reference group employed by the school. (CD = 1.25)

Computation of applicant score (AS):
AS = (42.67 + 66) x 1.25 = 135.83

Applicant C

Description: Black, low grades and SATs, few activities and performance in areas outside education.

GPA = 2.6
LSAT = 370

Computation of C score:
The school evaluating Applicant C does not specifically weight GPA and LSAT, but makes an overall assessment of academic qualifications and ranks all the applicants to this school. Applicant C was in the lowest 20%, the T score equivalent of 30. (C = 30)

Computation of NC score:
Applicant C scored as follows on the eight noncognitive variables making up the NC score:

Self-concept = 2
Realistic self-appraisal = 1
Understands racism = 1
Long-range goals = 2
Strong support person = 1
Leadership = 1
Community = 1
Demonstrated legal interests = 2

The distribution of applicants yielded a T score of 32 for the sum of 11. (NC = 32)

Computation of CD score:
1.5 was assigned because the applicant reference group was 10% or less Black. (CD = 1.5)

Computation of applicant score (AS):
AS = (30 + 32) x 1.5 = 93

B. QUANTIFIED DIVERSITY ADMISSIONS MODEL

For the past ten years law school admissions has typically been a highly quantified process whereby an applicant's GPA and LSAT score were given predominant weight in the admissions decision.[20] Both prior to and post-*Bakke*, however, some law schools determined

20 Please refer to Section IV, *supra*, for an analysis of the weights assigned to the GPA and LSAT in ABA-approved California law schools.

that their institutional objectives required an approach to admissions that comprehended more than automatic admission to candidates on the basis of the highest cognitive indices. [21]

Although there always exists the fear of too much mechanization and not enough attention to individual characteristics when an admissions process is highly quantified, the typical admissions procedure during the past ten years has, in fact, been extremely mechanical. Many of the decisions could almost have been made by computer with offers of admission automatically going to the possessors of the highest GPAs and LSAT scores.[22] Some schools have tempered the admission-by-number syndrome with personal evaluations of the candidate's other attributes. But for a fair evaluation of other applicant traits deemed to be relevant to an institution's educational and societal goals, there must be a clear delineation of the institutional goals and they must be scrupulously followed with each candidate.

A highly quantified admissions matrix represents a fair manner of assuring that each applicant for admission to law school is evaluated on the same relevant objectives by all members of the admissions committee. Especially in the post-*Bakke* era, most law schools in California espouse numerous diversity characteristics, such as those suggested by Justice Powell in his opinion in *Bakke*.[23] What is not clear, however, from the survey information elicited by MALDEF from the fifteen ABA-approved schools in California is how due weight is accorded to some of the varying diversity characteristics which different schools find relevant to their own institutional objectives. [24]

In a post-*Bakke* period in which a majority of institutions appears to be placing greater import on factors apart from purely cognitive ones, fairness, consistency, and due process are potentially well served by a carefully designed quantified admissions model.[25] Needless to say,

21. Among the innovators have been Temple University and Rutgers University Schools of Law.

22. See Section IV, *supra*, for an analysis of MALDEF's survey instrument distributed to all ABA-approved California law schools.

23. See Section V, *supra*, for an analysis of Justice Powell's opinion and his suggestions of appropriate diversity characteristics to be considered in admissions decisions.

24. See Section IV, *supra*, for an analysis of the data obtained from the questionnaire MALDEF distributed to the ABA-approved law schools.

25. For an excellent discussion of due process in admissions, see Gellhorn and Hornby. Professors Gellhorn and Hornby state at page 975: "Until now, state law schools, like almost all selective educational institutions, have not had to expose their admissions decisions to constitutional scrutiny except in regard to sex or race classifications. But the Supreme Court's imposition of constitutional restrictions on the distribution of other governmental benefits—welfare, public employment, and drivers' licenses, for example—makes timely an examination of the procedures for allocating state-subsidized higher education."

The authors conclude at pages 1010-1011: "We have presented here what we consider to be the implications of constitutional developments in other contexts for state law school admissions processes. A comment on one likely side-effect seems worthwhile. Development of 'ascertainable' standards will make criteria ascertainable not only to applicants but also the rest of the law faculty, the university administration, and the state legislature. Thus, greater scrutiny and input, constructive and otherwise, from all these sources is to be expected. Definitions of the institutional goals will provide a focus for debate and criticism. At the same time, demise of the 'dean's wild cards' will eliminate a means of diverting some of that scrutiny. The increased visibility of these important policy decisions will likewise focus attention on the administrative level (committee, law faculty, administration, board, legislature) at which they are to be exercised. We see no reason to decry these consequences for any state agency, including a law school.

"More importantly, however, the overall consequences of what we propose will elevate the process of law school admissions. The more open procedures will promote accuracy and fairness by exposing to view and challenge the factors upon which decisions are made and by reducing the opportunity for extraneous

each individual law school would have to sculpt a model to satisfy its own unique institutional needs. An example, however, of a meticulously designed model is that of Temple University School of Law.

Temple University, in 1968, in the aftermath of the assassination of Dr. Martin Luther King and the recognition that only two of the 500 students enrolled in the law school were Black, began, by its own admission, heroic and consistent efforts to rectify what was perceived as a pernicious social ill.[26] The school's efforts at recruiting and admitting racial/ethnic groups have been honed over a decade's experience. The resulting admissions matrices currently used at Temple University reflect not only a commitment to the populist tradition of the school to offer superior educational experiences to all, but also a realistic appraisal of precisely which admissions procedures have produced positive results.[27]

Although the admissions formulae utilized by Temple University School of Law are highly quantified, they at the same time embody an individualistic, humanistic approach which few law schools with less "quantified" admissions matrices approach.[28] As Dean Liacouras of Temple University School of Law aptly observed:

> We have nearly three times as many qualified applicants as available seats. What we should be asking and doing something about, is how and why numerical indices (GPA-LSAT) were developed, used, over-used and abused in filling those seats. What we should be stressing is the *humanistic* aspect of admissions; use of people-oriented, not numbers-oriented indices, assumptions, objectives, validation studies and rhetoric *for all persons*. Such questions are not for 1963 vintage; their answers should be agenda item number one in 1978.[29]

One might add that the questions posed by the dean continue to be relevant for 1979 vintages and beyond.

To effectuate the public policy goals of Temple University School of Law, namely those of fulfilling its populist objectives, variations of the following regular and special admissions formulae have been and are presently in use. Regular admissions candidates are evaluated pursuant to objectified criteria, with offers of admission going automatically to candidates scoring over a determined numerical score. In 1978, for example, Temple University's admission standard for nondiscretionary, regular admissions was as follows:

1. Undergraduate grade average x 338	1352
2. Last reportable period grade point average x 112	448
3. Highest LSAT x 1	800
4. Highest Writing Ability (WA) score x 5	400
5. Academic honors and achievements (up to 50 points)	50

pressures. While the initial process of articulating objectives and developing the standards to fulfill them will consume a significant number of man-hours, the recurrent cost of applying such standards will not be great. It is time law schools began to practice the procedures we as lawyers have so eagerly preached to other administrative agencies." Ernest Gellhorn and D. Brock Hornby, "Constitutional Limitations on Admissions Procedures and Standards—Beyond Affirmative Action," 60 U. Virginia L. Rev. 975-1011 (1974).

26. Liacouras, *Toward a Fair and Sensible Policy for Professional School Admission*, p. 158.

27. Ibid., pp. 156-180.

28. See Section V, *supra*, for a discussion of Justice Powell's approval of this sort of individual assessment of a candidate for admission.

29. Liacouras, *Toward a Fair and Sensible Policy for Professional School Admission*, p. 161.

6. Peace Corps, VISTA, military service, etc. (up to 50 points)	50
7. Substantial part-time work during college (up to 50 points)	50
8. Full-time employment post college (up to 50 points)	50
9. Undergraduate college grade point average adjustment (up to 50 points)	50
Maximum combined point total	3250[30]

An applicant falling below the automatic cutoff score, which varies from year to year, is then potentially eligible for consideration under Temple's Sp.A.C.E. Program (Special Admissions and Curriculum Experiments Program). For consideration under the Sp.A.C.E. admissions formula, a candidate must exhibit some exceptional characteristics or characteristic; applicants may also specifically request that they be evaluated pursuant to the Sp.A.C.E. criteria.[31] The six categories suggested by Temple University School of Law as within the jurisdiction and purview of Sp.A.C.E. admissions are as follows:

1. Minority: Black, Hispanic, American Indian, Asian, or any other group grossly underrepresented in the legal profession;
2. Nonminority (i.e., other than category (1), *supra*) with equivalent admissions criteria as in category (1);
3. College GPAs of 3.80 or above (including Phi Beta Kappa, *summa cum laude* honors);
4. Overcoming exceptional and continuous economic deprivation (the "Conwellian" tradition);
5. Exceptional and continuous leadership ability demonstrated in substantial college or community activities;
6. Exceptional physical disability, such as blindness, which precludes taking the [regular] LSAT.[32]

The variations possible under a quantified admissions system are virtually infinite. The Temple University model, as well as the quantified formula set forth *infra*, are illustrative of the flexibility that quantified admissions matrices permit schools in establishing admissions policies consistent with their institutional needs and objectives. For example, one medical school in 1978-1979 conducted its admissions by the following format which quantifies an applicant's GPA, MCAT score, minority status, and disadvantagement:

TABLE 3
Range of Applicant Grouping for Admissions Process 1979

OGPA	Points	MCAT	Points
P/F	10	15-10	10
4.0-3.6	10	9-8	6
3.59-3.0	6	7-6	4
2.9-2.8	4	5-4	1
2.79-2.51	1	3-0	0
2.5-0	0		

If minority—5 points
If disadvantaged—5 points

SOURCE: "Admissions Procedures for 1978-79," mimeographed for a nationally known state supported medical school.

30. Ibid., p. 179. It should be noted that Temple University adjusts an applicant's grade point average on the basis of actual grade inflation at the particular undergraduate institution of the applicant rather than assuming that candidates from prestigious undergraduate schools should automatically receive bonus points. In fact, Temple University School of Law has documented that grade inflation is often most prevalent at Ivy League-type universities.

31. Ibid.

32. Ibid., pp. 180-181.

Any applicant receiving 15 points or more in the initial screening is placed in Group A, which signifies that the candidate will be interviewed. Additionally, any candidate with a doctoral degree (including a Ph.D. or J.D.) is automatically interviewed. Applicants whose total points do not reach 15 are placed in Group B; Group B applicants are given individualized consideration based on specific criteria related to outstanding achievements in medical and other research. After evaluation of candidates in Group B on these enumerated criteria, 100 applicants from Group B are transferred to Group A and, therefore, interviewed.

Again, the commendable aspect of this admission plan is the forthrightness with which the school has constructed an admissions matrix which satisfies its clearly enunciated institutional goals. The school states:

> The Admissions Committee is charged with the selection of 100 individuals to begin study each year. In the selection process the Committee seeks those applicants who have demonstrated, through achievement, academic potential for a life-time of directed and self-study. It also seeks those individuals who are cognizant of the physician's role and its demands, have demonstrated ability in effective interpersonal relations, are caring of the needs of society and its individual members and who show promise of serving the needs of the individuals in our pluralistic society. Since our society is composed of a diversity of groups, the physicians who serve these groups must represent a diverse spectrum of society. The Admissions Committee is acutely aware of this fact and actively seeks individuals from a wide variety of backgrounds and interests who can share experiences and knowledge of diverse population groups and, in turn, better prepare themselves to serve individual patients who represent the widely divergent elements of our society.[33]

In summary, a quantified admissions model is capable of the virtues which were previously discussed: noncognitive traits can be systematically and fairly applied to all applicants; noncognitive traits can be explicitly incorporated into the cognitive predictive index, which, as was stated in Section III, *supra*, is known to be an incomplete evaluator on which to predict one's potential to be a good law student or lawyer; the noncognitive factors which a school chooses to publish can truly reflect the social and institutional goals of the law school; noncognitive diversity characteristics are indisputably within the purview of the *Bakke* decision; and finally, the correct use of a quantified admissions system which is highly attuned to the goals of the school can ensure a degree of fairness, consistency, and educational due process which few other methods of admission can guarantee.

Law schools can, under a quantified system, exercise their discretion in determining the kind of student body they want, including a highly diverse group with strong representation from a variety of racial/ethnic backgrounds. Weight, for example, could be accorded some of the

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33. "Admissions Procedures for 1978-79," mimeographed for a nationally known state supported medical school.

See Bruce Fuller, Patricia P. McNamara, and Kenneth C. Green, "Alternative Admissions Programs," *Admitting and Assisting Students After Bakke*, ed. Bruce Fuller and Kenneth C. Green (San Francisco: Jossey-Bass, Inc., 1978), pp. 3-10. For other interesting and well-developed admissions matrices which, though quantified, seek to evaluate numerous applicant characteristics, see the admissions plans described in *Admitting and Assisting Students After Bakke*. Among the comprehensive plans are those of the College of Human Medicine, Michigan State University; the Medical College of Ohio; and the Medical Sciences Program, Florida State University—Florida A & M University as detailed in the Fuller, McNamara, and Green article cited *supra*.

noncognitive traits isolated by Dr. Sedlacek in Section VI, Part A, *supra*, or those identified in the pilot study of three California law schools in Section VI, Part D, *infra*. Furthermore, a highly quantified model need not be so rigid as to preclude the exceptional individual who does not fall neatly into any of the categories set forth. The quantified model could contain a category allotting specific points for the truly exceptional applicant, or a solution similar to that provided by Temple University's Sp.A.C.E. formula could be fashioned.

In short, our advocacy of a quantified model is totally antithetical to the sort of quantified formula typified by the numerical prediction indices based solely on GPAs and LSAT scores. A quantified model need not connote narrow or mechanical decision making. Rather, it is an opportunity for schools to assign numerical weights to any set of student characteristics that are consonant with their changing institutional missions. Thus, law schools may develop comprehensive, well thought-out admissions procedures responsive not only to their educational goals, but also to the moral and social responsibilities incumbent on institutions in a pluralistic society.

C. PROTOTYPE BASED ON THE URBAN LEGAL STUDIES PROGRAM

PROGRAM DESCRIPTION

The Urban Legal Studies (ULS) Program was begun in 1975 at City College of New York in conjunction with New York Law School, a recognized ABA-approved law school. The ULS Program, in keeping with the high academic, yet urban, tradition of City College seeks to select and enroll fifty well-qualified high school graduates for a combined six-year B.A.-J.D. degree.[34] Applicants to the Program must have, among other requisites, an eighty or better average on graduation from high school, and must demonstrate commitment to the goals of the Program. The ULS Program is principally dedicated to the goal of training excellent lawyers who will serve the needs of those who comprise the majority of any large urban setting: the nonaffluent, minorities, the non-English speaking, and the elderly.[35]

Indeed, the ULS Program is innovative not only in its goals as they differ from traditional legal educational goals, but also in the structure of the Program. Students, though entering the six-year program with a personal commitment to obtain a J.D. degree, must complete all the Bachelor's degree prerequisites.[36] However, while satisfying the Bachelor's requirements, students must also complete the following legal courses, all taught and evaluated by law professors from New York Law School:

First Year:
- Introduction to Law and Legal Process I;
- Introduction to Law and Legal Process II.

Second Year:
- Constitutional Law I;
- Constitutional Law II;
- Legal Research and Writing.

Third Year:
- Criminal Law;

34. "The Urban Lawyer: A New Professional," The Max E. and Filomen M. Greenberg Center for Legal Education and Urban Policy brochure, Urban Legal Studies Program, City College of New York, N.Y., Haywood Burns, Director.

35. Ibid.

36. Although the ULS Program is a combined six-year B.A.-J.D. degree, a prototype program could also be structured on a typical seven-year basis.

Criminal Procedure;
A Mandatory Internship.[37]

After completion of the undergraduate requirements of the three-year program, which include satisfying the prevailing minimum honors requirements at City College, ULS students may apply for admission to New York Law School. For automatic admission to the law school, ULS students must have maintained an overall GPA of 3.00 or better, an overall 2.00 or better average in the required law courses, and have completed ninety-six undergraduate credits from the ULS undergraduate curriculum. Satisfactory performance on the LSAT, meaning a median score, is also a prerequisite for automatic admission.[38] Applicants not admitted automatically are judged on a case-by-case basis as to their eligibility.

The innovation of the Program, apart from its thrust toward serving groups who have traditionally been ignored or at least have been objects of benign neglect by the legal system, lies in its ability to evaluate potential law students on the basis of actual law school work they have completed. It should be emphasized that the legal courses required for ULS participants are taught by regular faculty members at New York Law School and that the ULS students are evaluated using the same standards as are used for regular first-year law students studying the same courses. Since the ULS students at the time of completion of the undergraduate program have had ample opportunity to demonstrate either their ability, or inability, to be able to complete successfully law school studies, evaluation of a candidate for acceptance to New York Law School should be made principally on each student's demonstrated record.

Although the LSAT is still a requirement, its utility in evaluation of Urban Legal Studies may not be particularly relevant. By admission of the test manufacturers, the utility of the LSAT is clearly limited to its ability to predict first-year success in law school.[39] By contrast, the ULS Program offers the law schools an opportunity to evaluate a candidate on actual completed performance in specific first-year law courses.

In an approaching epoch characterized by a declining pool of undergraduate and graduate applicants, the ULS concept is attractive in several ways.[40] First, it allows undergraduate schools with affiliated law schools to take an active part in preparing a pool of qualified candidates for their law schools. Second, it fulfills a compelling obligation of providing legal education and services to groups and communities who historically have been excluded from the benefits which our legal system was designed to provide and protect. Third, the Program goes far toward obviating the need to place undue, if any, reliance on the LSAT, which, as discussed in Section III, *supra*, currently serves as the chief impediment to the entrance of minority and disadvantaged students into law school.[41] Finally, students who are not admitted to New York Law School or who choose to apply elsewhere may complete their fourth year at City College and attend other law schools.

37. "Urban Legal Studies Curriculum," The Max E. and Filomen M. Greenberg Center for Legal Education and Urban Policy, Urban Legal Studies Program, City College of New York, N.Y. (31 August 1979), Haywood Burns, Director and Leora Mosston, Associate Director.

38. Ibid.

39. See Section III, *supra*.

40. "A Multi-Campus System in the 1980s," Report of the Joint Planning Commission, University of California (September 1979).

41. Evans, "Applications and Admissions to ABA Accredited Law Schools," pp. 566-567.

LAW SCHOOL ADMISSIONS STUDY

It is important that the ULS Program not be construed as one which is exclusively reserved for minority students. In fact, in the 1978-1979 third-year ULS undergraduate program, class composition is 50 percent minority and 50 percent white; the majority of the students from both groups, however, are from racial/ethnic and lower socioeconomic backgrounds.[42]

By contractual arrangement, New York Law School reserves fifty places in each entering class for ULS students who have completed the necessary requirements within their three-year undergraduate study program at City College.[43] However, as mentioned previously, admission is not automatic, but rather contingent on satisfaction of the criteria set forth, *supra*. Although most ULS students who pursue legal studies do so at New York Law School, there are some exceptions.[44]

Any institution interested in replicating the ULS concept of a combined B.A.-J.D. degree could, of course, tailor the program to its own institutional and geographically dictated goals. The program could be of six or seven years in duration; its goals could be directed more to rural than urban legal needs; monetary sanctions or incentives could be provided to assure that the majority of the students trained at the undergraduate level by a particular institution would indeed complete their legal training at the affiliated law school; and finally, the undergraduate degree could be awarded prior to entry to law school or on completion of the first year of legal studies as is done in the ULS model. In sum, the variations are infinite and would depend on the goals and needs of a particular institution. The important point to recognize is the vast possibilities presented by a program of this kind.

PROGRAM DATA

Current data on the ULS Program for the first class which entered in 1975 and sought admission to law school in 1978 are as follows:

The age range of the following applicants is 17-30.

TABLE 4

1978 Law School Applicants

Number	Student	Overall GPA	Highest LSAT Score	Law School Admission Status
1	W.M.	3.72	622	A/O
2	W.F.	3.48	596	A/E
3	W.F.	3.67	521	A/E
4	C.F.	3.82	611	A/O
5	W.M.	3.46	517	A/E
6	W.M.	3.40	550	A/E
7	W.F.	3.58	594	A/O
8	W.M.	3.55	563	A/E
9	W.M.	3.58	549	A/O
10	W.M.	3.60	511	A/E
11	B.F.	3.33	505	A/E
12	B.M.	3.01	639	A/E
13	W.F.	3.00	561	A/E
14	W.M.	3.26	558	A/E
15	W.M.	3.12	563	A/E
16	W.F.	3.36	494	A/E
17	L.M.	3.00	426	A/O
18	W.M.	2.42	488	R/O
19	W.F.	2.68	583	A/E
20	L.F.	3.00	429	R/O
21	B.F.	2.67	556	R/O
22	W.M.	3.57	706	A/E
23	W.M.	2.97	455	A/E
24	L.F.	2.81	335	A/O

SOURCE: Leora Mosston to Mexican American Legal Defense and Educational Fund, 6 December 1979, p. 2; see footnote 42, *supra*.

42. Leora Mosston, Associate Director of the Urban Legal Studies Program to Mexican American Legal Defense and Educational Fund, 6 December 1979, City College of New York, N.Y., p. 3.

43. "The Urban Lawyer: A New Professional."

44. Professor Haywood Burns, Program Director, stated on 7 December 1979 at the Advisory Committee

(LEGEND):

F = Female
M = Male
B = Black
W = White
L = Latino
C = Chinese
A = Accepted New York Law School
E = Enrolled in New York Law School
R = Rejected by New York Law School
O = Attending other law schools

Twenty-four ULS students sought admission to New York Law School after three years in the Program. As of December 1979, all of the students admitted to law school were pursuing studies, with the exception of number 23 who was dismissed from New York Law School for academic reasons: a GPA of less than 2.00. The dismissed student, however, did complete his B.A. degree.[45] Of the other fourteen ULS students admitted and attending New York Law School, all maintained a 2.00 or better cumulative average during their first year, with most maintaining a 3.00 or better. Illustrious examples are: two ULS students with respective LSAT scores of 521 and 517 became law review members; one student with an LSAT of 639 received a four-year Urban Legal Fellowship; one student whose LSAT was 511 was appointed to the Jessup International Law Moot Court Team; and finally, one student with a 561 LSAT won the Court Best Brief award.[46]

With respect to ULS applicants to law school in 1979, the data are as follows:

The age range of the following applicants is 20-32.

TABLE 5

1979 Law School Applicants

Number	Student	Overall GPA	Highest LSAT Score	Law School Admission Status
1	W.M.	3.56	680	A/E
2	L.M.	3.29	549	A/O
3	W.M.	3.25	627	A/E
4	W.M.	3.73	606	A/O
5	W.F.	3.43	487	A/E
6	W.M.	3.16	627	A/E
7	W.M.	3.00	653	A/E
8	B.M.	3.00	474	A/E
9	B.M.	3.12	430	A/O
10	W.F.	3.33	474	R
(Completing fourth year at City College)				
11	W.M.	3.00	680	A/E
12	W.M.	3.00	680	A/E
13	L.F.	3.00	506	A/E
14	B.F.	3.00	477	R/O
15	W.M.	3.00	499	R/O

SOURCE: Leora Mosston to Mexican American Legal Defense and Educational Fund, 6 December 1979, p. 3; see footnote 42, *supra*.

PROGRAM ANALYSIS

The advantages of an innovative program such as the ULS model are numerous. First, although it is not a minority program, it assists both minority and white students in gaining access to law school on the basis of their actual performance in selected first-year classes as compared with predicted performance based on the LSAT. It is indisputable that this is a benefit to most minorities and to some majority-culture individuals, as is

meeting to MALDEF's Law School Admissions Study that there are former ULS students currently studying law in diverse institutions such as the University of Southern California, Hastings School of Law, and Rutgers University. The majority of the ULS students, however, do not have the option of applying for admission at law schools other than New York Law School since they are not awarded their B.A. degree until after completion of the first year of law school at New York Law School. Some students, however, have accelerated their undergraduate studies or have chosen to spend additional time at City College to satisfy all undergraduate requirements prior to applying to law school.

45. Mosston to MALDEF, 6 December 1979, p. 3.

46. Ibid.

made evident by the classes admitted in 1978 and 1979 to New York Law School, *supra*. A second, and great, advantage of the Program is that students who do enter law school are well prepared for the study of law by virtue of the regular law courses they have already completed. Therefore, the tutorial and supportive programs which are advisable, if not indispensable, at most law schools with special admissions programs are unnecessary with ULS students who have already experienced extensive legal writing, reading, and analysis prior to entry to law school.

Another obvious benefit of the ULS Program is that it prepares a pool of attorneys for potential service in underserved communities. Although graduates of the ULS Program and New York Law School are under no contractual obligation to practice in underrepresented areas, certainly most enter the Program with that objective since commitment to the goals of the Program is one of the characteristics evaluated for each individual ULS applicant. Careful admissions decisions based on student and faculty assessments assist in fulfilling these goals. Providing a pool of professionals to serve the hitherto neglected was, of course, one of the justifications Davis offered for its 1973-1974 admissions plan, even though Justice Powell found no evidence in the record to support the assertion.[47]

Furthermore, Professor Haywood Burns, Esq., Program Director of ULS, has noted that ULS first-year law students are particularly well prepared for the study of law since they are already familiar with methods of legal study and legal principles.[48] Such familiarity would be a boon to all culture-shocked first-year law students, but is especially so to minority students for whom the legal profession is an even more alien environment.

Finally, a program such as ULS lends itself to many variations; it could be used as a prototype to be adjusted according to the institutional objectives of individual law and undergraduate schools. Such a program could address some of the following needs: creation of a qualified and diverse student applicant pool for law school; preparation of a qualified and diverse entering law school class willing to meet the needs of the poor and minorities; and cultivation of a law school body approaching racial/ethnic parity with the particular geographical region in which the school is located.

D. SUMMARY OF MALDEF PILOT STUDY

INTRODUCTION

This report analyzes data collected as part of the law school admissions study.[49] The survey was designed, administered, and coded by MALDEF. Information about grades, test scores, social background and goals were recorded for 391 students at three Bay Area law schools, identified in this report as law schools 1, 2, and 3, with sample sizes of 78, 122, and 191, respectively. Of particular interest is the relationship between first-year law school grade point average (LGPA) and other variables, including Law School Admissions Test scores (LSAT) and undergraduate grade point average (UGPA).

The reader is cautioned that this study is based on a sample of currently enrolled law students, and is not a random sample drawn from the pool of all applicants.

47 The Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 310-311 (1978).

48 Professor Haywood Burns speaking at the Advisory Committee meeting to MALDEF's Law School Admissions Study on 7 December 1979.

49 The following is a distillation of a pilot study completed for MALDEF by Dr. Richard Drogin, a faculty member at California State University, Hayward. His report contains all the statistical equations and data which, for clarity, were deleted here.

Accordingly, inferences drawn from the study about the pool of applicants may not be valid. Moreover, many of the items on the survey are subjective, and, consequently, responses may not be consistently measured. Students given discretionary review were not considered separately.

SUMMARY DESCRIPTION OF DATA

The questionnaire used in the survey included fifty-one items. For reasons of expediency, twenty-seven items were selected for analysis. For these items, the mean response and standard deviation was computed for each racial group, within each of the three schools. Responses for white, Mexican American, and Asian were considered separately. Black responses were combined with Native American and other minorities. The term "minority" refers to all nonwhite students. Some observations from these calculations are summarized below.

1. The ranking of each ethnic group for LGPA, UGPA over all years, UGPA in any particular year, and for the LSAT scores, is consistent across schools: whites have the highest average, then Asian, then Mexican American and Black.

2. Minorities have higher responses than whites in mentioning past community service, volunteer activities, and future goals to help the community or society.

3. Among the variables showing no consistent ethnic differences were: working while attending undergraduate school; possession of a graduate degree; prior exposure to law through work or other experiences; and mentioning leadership or principal organizer roles in past experiences.

LINEAR REGRESSION

Linear regression is a statistical technique for describing the relationship between variables. For a given set of data, this procedure gives a formula, or equation, for the expression of one variable (called the dependent variable) as a function of the other variables (called the independent variables). When the set of data used to compute the regression equation is based on a random sample, and when certain technical requirements are met, the equation can be used to predict the value of the dependent variable for a given value of the independent variable or variables.

When a linear regression equation is calculated from a set of data, it is of interest to describe the accuracy of the fit. A popular measure of accuracy is the correlation coefficient. In particular, the correlation coefficient squared (referred to as R-Square) can be interpreted as measuring the proportion of variation in the dependent variable which is accounted for by the independent variables. So, a correlation coefficient squared of 1.00 would mean that the dependent variable can be determined exactly, when given the value of the independent variable or variables. This case is reported by stating that 100 percent of the variation is explained by the regression. A correlation coefficient squared of 0.00 indicates that knowledge of the independent variables is of no use in predicting the value of the dependent variable (through a linear equation), which is reported by stating that 0 percent of the variation is explained by the regression. A correlation coefficient squared, for example, of .377 is reported by stating that 37.7 percent of the variation is explained by the regression. Broadly speaking, the farther from 0 percent the reported percentage is, the better, since more of the variation of the dependent variable is explained by the independent variable or variables.

Various linear regressions were attempted for each of the surveyed law schools. Most of the regressions attempted set first-year LGPA as the dependent variable. The following is a list of variables used as independent variables: grad-

uate degree, latest LSAT score, overall UGPA, community service, volunteer activities, help to community, and ethnic group membership.

The equations of primary concern were those with latest LSAT and overall UGPA as independent variables. For each of the surveyed law schools, if the data comprised a random sample and if certain technical requirements were met, one could conclude that the independent variables LSAT and UGPA accounted for a statistically significant amount of the variation in LGPA. The results of the regressions are summarized in the following table:

TABLE 6

LSAT-UGPA
Regression Summary

Law School	Constant	LSAT	UGPA	R-Square
1	-1.6235	.0049	.4253	.377
2	48.4719	.0373	1.8320	.532
3	.9729	.0022	.2898	.240

EVALUATION OF UGPA AND LSAT WEIGHTING FORMULAS

1. Criteria Currently in Use.

In addition to the student survey information described above, several law schools (including law schools 1, 2, and 3) reported the formulas in use at their campus for evaluating UGPA and LSAT in the admission process. Each of the twelve surveyed schools used a specific predictive-type index, as calculated by the LSAC, to evaluate law school applicants. In all cases except one, the predictive index is calculated by weighting UGPA and LSAT, and then adding these values. That is, the index is computed by: Index = weight 1 x LSAT + weight 2 x UGPA. In some cases a constant is added, but this has no effect on the ranking of applicants, because it is the same for all applicants.

Since UGPA ranges up to 4.0 and LSAT ranges up to 800, one could consider a weighting of 200 for UGPA and 1 for LSAT as giving equal weight to each factor. Analogously, a weighting of 100 for UGPA and 1 for LSAT could be interpreted as giving twice as much weight to LSAT as UGPA.

2. Comparison of Criteria.

In order to evaluate indices currently in use (as described above), and other possible indices, two measures are considered: the correlation between the computed index and LGPA, and the relative position of minorities when the index is used to rank students. The relative position of each ethnic group is measured by the average rank of group members, where the rank of an individual is the position on a list ordered by the index.

OBSERVATIONS BASED ON COMPARISON OF CRITERIA

1. Minority ranking improves as weight of UGPA is increased.

2. Correlation of index with LGPA goes down as weight of UGPA is increased.

3. Using a 1:200 weighting (of LSAT to GPA) instead of a 1:100 weighting improves the average rank of minorities at law school 1 by 1.9, at law school 2 by only .5, and at law school 3 by .6.

4. Using a 1:400 weighting instead of a 1:100 weighting improves the average rank of minorities at law school 1 by 5.9, at law school 2 by 2.8, and at law school 3 by 2.8.

5. At law school 3, using a 1:400 weighting instead of a 1:100 weighting improves the average rank of Mexican Americans by 5.6.

CONCLUSION

Observations based on this pilot study are tentative because of the inherent limitations of the data and the fact that only three schools were involved. With these limitations in mind, the suggestion is made that ABA-approved law schools consider characteristics—such as past community service, volunteer activities, and future goals to help the community or society—which may be more reflective of the interests of minority law students. Providing increased weight to grades rather than LSAT scores may improve the average ranking of Mexican American law school applicants.[50]

50. Future research efforts by individual ABA-approved law schools may be able to elaborate on these findings by combining our results with Dr. William E. Sedlacek's ongoing investigation of minority noncognitive characteristics in the context of medical school admissions.

VII

A MODEL SUPPORTIVE AND RETENTIVE PROGRAM

Professor Jeffrey Kupers, J.D., University of San Francisco, School of Law

INTRODUCTION

In a number of law schools throughout the country, it is presently being demonstrated that minority and disadvantaged students, admitted despite traditional indicators of LSAT scores and undergraduate grades below those of their classmates, can succeed and even excel in their academic performance in law school. In part this is a product of perceptive admissions evaluations which carefully consider other important factors relevant to a prediction of success. To a large extent it is the result of intensive academic support programs designed to counteract the lingering effects of prior educational deprivation.

One such academic support program is the Special Admissions Tutorial Program at the University of San Francisco School of Law (USF). Developed and expanded over a number of years, this program is now demonstrating a notable success rate. The teaching methodology and organizational structure of this program are outlined here as a suggested working model that can be adapted by other law schools as an essential and productive ingredient in a meaningful special admissions program.

THE BACKGROUND AT USF

The Special Admissions Tutorial Program at USF was established in 1970 for the purpose of making a legal education an achievable goal for minority and disadvantaged students who had, for the most part, been excluded from the nation's law schools. The USF Tutorial Program was also established in the recognition that traditional admissions criteria were inadequate indicators of the probable success of applicants who had been deprived of equal educational opportunities.

It was soon recognized that mere admission to the law school, with no follow-up support mechanisms, would lead to the fulfillment of the widely accepted and not surprising prophecy of academic failure for many of the educationally disadvantaged students. With the initiative first coming from the minority student organizations within the law school, a program of tutorial assistance was instituted which has now grown into a successful and highly structured academic program which receives the support of all aspects of the law school and university community and involves the participation of faculty, students, and alumni.

ASSESSMENT OF NEEDS AND PROGRAM APPROACHES

The development of an academic support program must flow from an identification of the specific needs of the students. Some of the students will, of course, succeed with or without a tutorial program. But all or most of the students reflect a variety of characteristics which are not addressed adequately by the regu-

lar law school curriculum. While generalizations are difficult to make and often not helpful, a careful evaluation of the special admissions students shows a number of problems which must be addressed.

During their prior schooling, special admissions students very often have not achieved a level of basic writing and reading skills necessary to succeed in law school and to compete effectively with other students. They often do not have the same level of familiarity with law-related topics, and with legal and commercial concepts and processes. They often have not had sufficient opportunity to develop their analytic skills to a high degree. Their approaches to study, and their ability to synthesize large quantities of materials, are sometimes not adequately developed.

All of these factors relate to basic skills, skills that can be acquired through diligent work and the availability of supportive services in law school, and to exposure to the law, which will happen naturally in law school but can also be supplemented. The approaches discussed in this section are designed in part to provide students with the extra assistance and training that will enable them to do well in law school.

An equally important concern, and one that for at least some students takes on even far greater significance, is the manner in which students admitted under the special program view their presence in the law school and their skills and educational backgrounds as compared to other students. The students are painfully aware that their undergraduate grades and LSAT scores are well below those of the other students in their class. They often hear of past disqualifications and bar examination failures of those who have preceded them, and they are deeply concerned about their own chances.

The unfortunate irony here is that a lack of confidence can be a dominant cause of a student's academic problems. Some degree of concern can be a useful incentive for diligence, but in the extreme it can seriously interfere with the ability to function well academically and to perform well on examinations.

An essential approach to the USF Tutorial Program is, therefore, to encourage a cautious optimism and confidence. The LSAT scores are viewed for exactly what they are: an extremely narrow and culturally biased evaluation of a limited range of particular skills that are for the most part totally unrelated to the practice of law but may be useful in formulating a course of study, skills development, and academic support. The scores are not ignored. To the contrary, they are fully discussed and carefully used along with other indicators to plan a tutorial study program for each student.

But it is clearly stated to the students that in the view of all of the program staff, the LSAT scores do not measure intelligence, do not measure the skills and abilities necessary to become an effective lawyer, and do not necessarily predict how a student will perform in law school, especially if the proper assistance is sought and provided.

Throughout the first year of study, the Tutorial Program encourages frank discussion of the situation in which the students find themselves and of their reactions to it. There is a continuing process of developing and depending on mutual support among the students, and of dealing openly with the frustrations inherent in the study of law. Emphasis is placed on the strong qualities that the students bring to the study of law, with admission to law school having been a far greater accomplishment for them than for other members of their class.

In the day-to-day teaching process, attention is given not only to correcting erroneous approaches, but to pointing out and continually reinforcing the positive aspects of the students' work. By being

shown where they are on point and doing good work, students learn to emulate their own correct approaches as well as those of others.

In addition to providing academic assistance, there is an attempt to create a network of support that will lessen the isolation felt by students and encourage the confidence that can lead to success.

While occasional students may feel a social stigma attached to a tutorial program, the far more dominant view is that the program is a legitimate and deserved supplement to their legal education. Students are taught and counseled on how to get A grades, not just how to pass and get by. This approach leads to better performance by all of the participants and encourages participation even by the students who are confident that they would be able to pass the courses on their own.

PROGRAM ELIGIBILITY

The Special Admissions Tutorial Program is an optional course, available to all students admitted to the first-year class through the special admissions process. At the beginning of the year, after having received descriptive materials along with notification of their acceptance to the law school, the students are asked to make a commitment to participate fully in all aspects of the Tutorial Program for the entire year. Since the program is designed as a weekly progression through the building blocks of effective law study and legal reasoning, occasional attendance is of marginal value and is discouraged.

For students regularly admitted to the law school who are in need of extra assistance, there is an attempt to arrange other forms of academic support. After the first semester, students whose grades are below passing are invited to join the program.

For students not eligible for the program, and for special admissions students still in need of assistance after the first year, a program of volunteer tutoring by students and alumni has been established.

THE SUMMER PROGRAM

For many special admissions students, the period of adjustment to law school is painfully long. By the time students discover what is expected of them and develop sound approaches to their studies, they often find themselves months behind in learning and understanding the substantive materials.

To provide an early exposure to the work the students face in their first year, USF has developed a summer pre-law program, the Introduction to the Study of Law Course. Taught by the program director with the assistance of experienced student tutors, the program involves a full-time curriculum of classroom discussion, individual and group tutoring sessions, extensive writing exercises, and related activities.

In subject matter, the course focuses on tort law, with some exposure to the other first-year courses. The students receive a set of cases and materials relating to the concept of intent, a few of the intentional torts, and some of the affirmative defenses. In addition, they receive samples of secondary study aids, treatises, discussion hypotheticals, examination questions and answers, and a variety of sample case briefs, study outlines, and class notes.

Morning class sessions are designed to simulate the actual law school classroom process, with emphasis on understanding the facts and recognizing the issues in each case, gleaning from each case the relevant law and the court's analysis, and then applying the rules of law and the analytical process to the hypothetical questions. Class time is also devoted to the techniques of note taking, outlining, briefing, developing study skills, using study aids, and writing examination answers.

In the afternoons, the students meet in small groups with their tutors. The cases are analyzed in greater detail, with the use of additional discussion questions, allowing each student to speak at length about the cases and the class hypothetical problems and to seek fuller explanations when necessary. In the groups and in individual sessions, the tutors review with the students their class notes, case briefs, and examination answers. From the first day of class, students are shown how to synthesize the materials they are covering into useful study outlines.

In addition to the class and study sessions are numerous other events during the course. On several occasions practicing attorneys, often the products of special admissions programs themselves, attend afternoon gatherings and luncheons to speak about their current law practices and their experiences in law school. First-year professors are invited to meet in small groups with the students, to begin the process of communication and to break down barriers that might exist. Upper-class students, in particular the members of minority student organizations, attend several functions to meet the new students and to discuss the law school experience.

The goal of the program is to have the students prepared from the first day of their regular classes to participate fully in all aspects of the study of law. Given their early acquaintance with principles to be covered during the first weeks of classes, and their experience in classroom discussion and study technique, they are able from the start to speak out with confidence in class and to approach effectively the materials for which they will be responsible.

At present, the USF summer course is limited to seven academic days. A longer program, such as the Council of Legal Education Opportunity six-week programs, could be even more effective. But unlike the CLEO programs, which limit the number of students they serve and which offer a stipend to each student, the financial needs of many of the USF students preclude them from attending a program of longer duration. Many students are required to earn an income for as much of the summer as is possible in order to pay their law school expenses.

The USF summer program, therefore, has been designed to be intensive and concentrated over a short period of time. In addition, there are fund raising efforts currently in progress, attempting to raise scholarship funds which could be used in part to enable students to attend a longer summer program.

EVALUATION OF PROGRAM PARTICIPANTS

With the writing samples from the summer program, and the observations of classroom participation, the program director begins an evaluation of the needs of each student participating in the Tutorial Program. Other sources of input are the student's prior academic performance, prior courses of study, LSAT scores, and other portions of the admissions file which are reviewed with the consent of the student. There are also discussions with participants in the admissions process and with the students themselves. In addition, the student tutors in the summer program provide an evaluation of each of the students with whom they worked.

The program director maintains a file on each student, including copies of their writing, notes from meetings with the students and with their tutors, and regular evaluations submitted by the student tutors.

The evaluations by the tutors are on two forms. The first is a checklist of considerations in evaluating the students'

practice examinations. Each time the tutor reads and critiques a student exam, in addition to the comments written on the examination paper, the tutor completes the evaluation form. One copy is given to the student, one is retained by the tutor, and one is submitted to the program director. From week to week, these forms provide a continuing picture of what strengths are being maintained, what weaknesses are being corrected, and what areas still require work. When problems continue for a number of weeks, the tutors and director detect them on the forms and confer on a course of action to correct them.

The other evaluation form that is used is a weekly report submitted by each tutor to the director, describing the sessions held with the students, the materials covered, and how the students performed.

By engaging in regular reviews of the work of each student, problems can be discovered in time to make corrections before final examinations.

TUTORIAL PROGRAM ORGANIZATION

The Tutorial Program is taught and coordinated by a program director as his full-time teaching responsibility at the law school. In addition, there is a staff of thirteen students, one serving as a student administrator and twelve serving as tutors. There are forty special admissions students in this year's first-year class, with all but a few of them fully participating in the program. Each year there are a few students who decide not to participate at all.

The student tutors are assigned, in teams of two, to between four and six first-year students. Each tutor is responsible for two of the first-year subjects, with one taking an extra subject in the spring semester, so that between them they cover the entire first-year curriculum with their students.

The director teaches two legal analysis classes each week, one for the day students and one for the evening students. In addition, there is a weekly class for the student tutors.

A committee composed of the law school faculty, with student participation, oversees the work of the program and provides assistance in promoting its goals.

SELECTION AND TRAINING OF STUDENT TUTORS

Tutors are selected during the spring semester of each year for participation during the following year. Students who will be in any of the upper classes during the following year are eligible. Students are selected on the basis of their sensitivity to the needs and goals of the program, their ability to relate well to the students in the program, their academic ability as indicated by their own performance, their prior experiences in teaching and counseling, and their thoughtfulness in anticipating the type of role they would play as tutors.

The students are required to make a commitment to the program of about ten hours per week for the entire academic year. Each year there is a large number of applicants, due in part to the broad student support for the program. In arriving at the final group of tutors, additional considerations are taken into account. There is an attempt to achieve a well-balanced staff, representing a variety of backgrounds and a variety of skills. To provide continuity from year to year, students from each class are selected, with a number of the tutors returning for a second year with the program. An attempt is made to hire a number of students who participated in the program their first-year and excelled in their studies. Attention is also paid to the subjects in which the students are best

able to tutor and the professors with whom they studied, so as to best reflect the needs of the program for the following year.

When the tutors are selected, they meet during the spring semester for a general orientation. They are provided with reading materials which describe the situation of minority and disadvantaged students in professional schools, and they are given suggestions for additional reading over the summer. To the extent possible, they are also given tentative assignments of subjects for the next year, so that they may begin their preparation during the summer. These assignments can be finalized, however, only as classes are about to begin and the exact needs become known.

During the year, the tutors receive one unit of credit per semester, along with a tuition adjustment of about $650 per semester, for their involvement in the program and for their enrollment in a weekly class, taught by the program director, in which teaching techniques are studied and administrative and coordinative functions are carried on.

In these classes, the tutors are trained in approaches to use with their students. The tutors are encouraged to evaluate the study techniques they themselves used in the prior year, and to focus on those techniques which, by hindsight, appear to have been most effective. The director reviews with the tutors various styles of note taking, case briefing, outlining, and other study skills. Using these as examples, as well as using portions of actual student examination answers, the class discusses effective methods of critiquing student work and providing suggestions for improvements.

The classes also cover approaches to basic reading and writing skills, including situations in which English is a second language for some students. At times, outside consultants and advisors are invited into the class to discuss these and other areas of skills development.

Attention is also focused in class on the emotional problems which occur in students' lives and which can interfere with academic performance. Such problems face a great many students regardless of their admissions status, but problems sometimes can be aggravated by the sense of isolation and frustration felt by some special admissions students. The academic effects of such problems can also be more severe for students who are not as well grounded in the basic study skills and who are, therefore, less able to deal effectively with interferences in their work. Experts in this area are invited to the classes to discuss these issues with the tutors.

The classes are also used for review of study and examination approaches for the various components of each of the first-year subjects. As preparation for these discussions, the tutors working with students of each first-year professor meet at the beginning of each semester with that professor and the program director to discuss the content of the course and the professor's particular approaches and expectations. With this input—including the director's experience and, where possible, assignment of tutors according to the professors from whom they themselves took the courses—there is regular discussion in the weekly classes of methods for reviewing with the students the various areas of law. This also provides the tutors with an opportunity to raise questions they may have about the substantive law.

Tutors who have developed a particular approach to an area of law, or who have found helpful reference and study materials, share these with the other tutors in the class. The program director continually works on developing additional materials as called for by the needs of the students, and these are also made

available to the tutors.

The tutors also meet from time to time, in the two-person teams, with the program director to conduct a thorough discussion of the progress of each of their students and to receive suggestions for further work with the students. In this manner, the program director is also able to evaluate the tutors' performance and to work with them on further developing their approaches to tutoring.

WEEKLY TUTORIAL CLASSES

The legal analysis classes, taught by the program director, are a regularly scheduled component of the first-year curriculum for students in the Tutorial Program. These classes are in addition to the students' otherwise full load. The subject matter rotates among the courses being studied by the students, and corresponds to the materials covered during the recent weeks in their other classes.

Although the format sometimes varies, the tutorial classes usually begin with the students receiving a hypothetical problem for discussion which is equivalent to a one-hour examination question. The students are given ten minutes to read and consider the question. The class discussion then begins with students being called on to state the legal issues which are involved in the hypothetical and then to arrive as a group at an outline of an answer which is then displayed on the chalkboard.

When a thorough outline is agreed on, various students are called on to formulate oral answers to each portion of the outline, explaining the relevant law in the process of analyzing the facts and reaching conclusions. Other members of the class are invited to participate in the formulation of the answer, making suggestions for improvements or raising disagreements as to approach.

Through this method of classroom teaching, the students learn to develop an approach to legal problem solving, and at the same time are informally tested on their knowledge of the law. Both students and teacher can observe weak areas that require further reinforcement, and strengths that should be maintained and cultivated.

The informal and nonjudgmental atmosphere of the class encourages participation by all of the students and a willingness to assert positions and ask questions which they might hesitate to raise in their other classes. Students are encouraged to cooperate, rather than compete, in answering questions. When answers are not readily forthcoming, students are allowed time in class to consult one another in search of an answer before seeking input from the teacher.

At each step of the way, emphasis is placed on the relationship between the knowledge and skills necessary to answer an examination question and the methods employed by the students in their day-to-day studying and class attendance. As to each particular aspect of writing an examination answer, and with regard to each substantive area of law, specific suggestions are made for a study approach that can lead to good results.

Students are encouraged to raise in class relevant examples from their own experiences. Some class time is spent allowing students to take varying sides of issues and to develop cogent oral arguments making full use of the facts. Each class emphasizes different skills of analysis and examination writing, building on what has been covered up to that point and using the questions to point out additional needed skills.

PRACTICE EXAMINATIONS

For at least one hour per week, begin-

ning with the first week of the fall semester, students in the program write practice examinations, in class, under examination conditions. The first few examinations are limited in the range of issues covered, and the writing exercise is preceded by thorough class discussion of the very question on which they are to write. But from the start, emphasis is placed on the manner in which the students ultimately will be called on to demonstrate to their professors their legal knowledge and ability; the relationship between those examinations and everything the students will do during the semester to prepare for them is equally emphasized.

With the support of their tutors, and adequate preparation in class by the program director, the students generally find the examinations helpful rather than threatening. After taking a few of these practice examinations, the students come to expect this exercise every week; whatever fears they may have of writing and of the final examinations at the end of the semester are lessened.

The examinations are designed to reflect the subject matter covered in regular classes over the preceding few weeks, with the examinations rotating each week among the subjects being studied by the students. The students are encouraged to begin systematic reviewing and outlining within the first few weeks of class, so as to be prepared for practice examinations and to begin early the process of synthesizing the courses for final examination purposes. It is understood, however, that they are not expected to be thoroughly prepared on the law each week, especially early in the semester, and this is taken into consideration in the critiquing of their exam answers.

The practice examinations serve a variety of purposes. They first provide students with extensive experience in the "art" of taking exams: the careful reading of facts, the organization of a coherent outline, the concise use of language, the careful allocation of time, the development of mental and physical endurance, and the ability to work under pressure.

Secondly, they provide the students and the tutors with an effective method of identifying the areas of substantive law, and the writing skills, which are in need of further attention.

Third, they serve as a basis for raising with the students the particular study approaches which should be altered to achieve a better result on examinations, as well as to identify and reinforce the study methods that appear to be working for each student.

And fourth, they serve as a basis for continuing critical evaluation by the program director and the tutors of each student's progress during the year. Using the students' answers along with other input, the program director can make precise suggestions to the tutors, and to the students directly, on how to improve their performance.

As the first semester progresses, the practice examinations become increasingly more difficult, resembling to a greater extent the types of questions the students might expect on their actual final examinations. On occasion, past actual examination questions are employed. A variety of examination styles and forms is employed so that, by the end of the semester, the students have been exposed to many different types of questions.

EXAMPLES OF PROGRAM TEACHING METHODOLOGY

The overall pedagogical approach used in the Tutorial Program is to focus constant attention on the direct relationship between the manner in which students carry on their day-to-day academic activi-

ties and the precise result being sought: excellence both in academic performance and in the preparation for the practice of law. Within this framework, every aspect of the students' work is evaluated with regard to its likelihood of achieving the desired results.

The Tutorial Program is viewed as a supplement to, rather than a substitute for, all of the other aspects of the law school curriculum. The skills training is designed to enable students to obtain the maximum benefit from their other academic activities. For example, students are encouraged to sit in the front of their classrooms, to participate actively, and to involve themselves mentally in every classroom exchange, whether or not they themselves have been asked to respond verbally. The tutorial classes and study sessions are designed in part to prepare students for this active participation in their other classes.

So that the students can learn to take thorough and useful class notes, their tutors attend some of their classes to take notes for purposes of comparison. The tutors also read and brief some of the cases and prepare sample topic study outlines, also for purposes of comparison.

The tutors and the program director review with each student individually the exact study methods being used by that student for class preparation and review. By considering study methods in light of weekly performance on practice examinations, the tutors and program director can suggest specific changes geared to making the most effective use of the student's time and energy.

The students are encouraged to seek out the assistance of their professors to the fullest extent possible. By working to build the confidence the students have in their own knowledge and abilities, the program is able to encourage them to feel comfortable exposing to others, and in particular to their professors, the areas in which they need assistance. With constant attention being focused on results, the students become more willing to ignore possible short-term embarrassment so as to better assure long-term success.

With regard to every aspect of their study, the students are encouraged continually to construct factual examples of the points of law they believe they understand. In classes, small groups, and individual study, this method quickly indicates whether there is true understanding, since all of the students know that they have the ability and imagination to create factual examples of concepts they truly understand.

Through the process of creating these examples, the students are constantly reminded of the relationship between law and facts, and they develop the ability to read facts more carefully and analytically. At least once each semester, the format of the weekly practice examination is reversed. The students are given a list of legal issues and are instructed to draft an examination question as though they were professors constructing a test for their students. This exercise is designed to demystify the examination process and to give students a better understanding of what is expected of them on examinations.

In the development of practice questions and discussion hypotheticals for the program, and in the teaching of the classes, an attempt is made, particularly at the beginning of the year, to relate the study of law to experiences closely related to the backgrounds of the students. Of course students must eventually be prepared to handle all types of factual situations, but their introduction to legal study can be greatly facilitated by the use of examples personally meaningful to them. Throughout the year, class discussion includes the manner in which the concepts being studied might arise in actual

litigation.

The tutorial classes and the small group sessions emphasize that students learn from each other. One of the most effective ways of learning a particular subject is to be placed in the position of teaching it to another. This process leads to a better understanding and builds confidence and cooperation among the students.

In the process of critiquing the students' written work, students are often asked to rewrite their answers after a discussion with their tutors. This has proven to be the most effective manner of reinforcing in the students the suggestions they have received for improvement, and it is often the only immediate indicator of whether or not the students have understood the critique and internalized the suggestions. Sometimes by reworking even one paragraph in the presence of the tutors, the students can recognize more fully the impact of the evaluation. Since students often have better oral than written skills, it has also proven helpful to have students in individual sessions read their answers aloud, thereby making evident to themselves the problems in their approach.

In all of their approaches to their work, the students are always encouraged to remain in full control of the allocation of their time and the effectiveness of their work. They are taught to take an active approach to their studying. Instead of just reading an assortment of materials, they are instructed to make effective notes and outlines, to evaluate constantly their strengths and weaknesses, to take a pragmatic view of each thing they must accomplish, and to seek assistance where needed.

VOLUNTEER TUTORIAL PROGRAM

While an intensive and highly structured tutorial program has proven to be a most effective approach, the limitation of financial resources for the program causes it to remain primarily directed to the first year of study. To provide upper-class students with the additional help they may need, a supplemental program was established with the participation of volunteer alumni and students

Questionnaires are distributed to the students who seek assistance and to the alumni and students who wish to volunteer, and assignments are made based on the information provided. The program director and student administrator provide study materials when requested, and the program director provides training for the tutors as required.

In addition to providing needed assistance beyond the capacity of the Tutorial Program, the volunteer program also brings more people into close contact with the special admissions students and helps to develop further support for the program and for the law school.

EVALUATION OF PROGRAM RESULTS

Because the Tutorial Program at USF has been in effect in its current form for only one complete academic year, any effort at thorough and meaningful evaluation would be premature. There are, however, a variety of methods being employed to conduct that evaluation, and some discussion of results is appropriate at this time.

Regarding the academic performance of the students in the program, a dramatic improvement has resulted from the expansion of the program. Further improvement is certainly desired, but the results of the first full year are promising. promising.

Although the special admissions students arrive at law school with indexes (based on undergraduate grades and LSAT

scores) at the low end of the class, sometimes substantially below the lowest of the regular admissions students, in the 1978-1979 academic year the special admissions students participating in the Tutorial Program received 27.6 percent of their grades in the range of B- and above, placing those grades in approximately the top half of the overall grade distribution for the first-year class.

The LSAT scores of these students were mostly in the 400 to 500 range, with some in the low 500s and some in the high 300s. Their undergraduate grade point averages were mostly in the B- to B+ range, with some in the C to C+ range.

Keeping in mind that a tutorial program did exist in the 1977-1978 academic year, the results of the expanded program in the following year showed a number of improvements. The grade point averages of the Tutorial Program students in good standing at the end of their first year increased 12.4 percent over those of the preceding year's students. The averages of those on probation increased 7.4 percent. And even those students who were disqualified, and therefore will have to reexamine to be readmitted to the law school, showed a 17.2 percent increase in their averages over those of their predecessors. In the overall grade distribution, less than one-third of the nonpassing grades went to special admissions tutorial students, a substantial improvement over the prior year.

The result for the 1978-1979 academic year was that 72 percent of the tutorial students advanced into their second year of law school, as compared to 63 percent in the prior year and often much lower percentages before the existence of a tutorial program.

It is, of course, far too early to predict the effect of the current Tutorial Program on the bar examination pass rate for minority and disadvantaged students. Given the general correlation between law school performance and bar examination success, however, the more widespread distribution of the grades of the tutorial students is a hopeful sign. While in past years special admissions students tended to be grouped at the lower end of the grade scale, just as they were on the admissions scale, the present reality has them appearing in each quintile of their class. In some courses they are capturing a quite respectable percentage of the higher grades. In most courses they are making a showing that far exceeds the academic performance which their LSAT scores would have predicted.

The additional evaluative methods mirror the results shown by academic performance. In questionnaires completed by the participating students, the Tutorial Program is given credit for helping to develop the skills needed for the study of law, the knowledge of the substantive law, and the confidence and ability to do well on examinations. Input from the first-year professors indicates that students are more actively participating in their classes and are better prepared. Reviews of the weekly practice examinations show continuing improvement by the students during their participation in the program.

CONTACT AND COORDINATION AMONG LAW SCHOOLS

In order to develop further teaching and evaluation methodologies and to provide for mutual support, the program director chairs a committee of tutorial program directors and student tutors from the law schools in the San Francisco Bay Area.

At meetings held from time to time, the participants describe teaching approaches and organizational structures that are proving effective at their schools. Teaching materials are exchanged, and

discussion takes place regarding particular problems being faced at the different law schools.

PROGRAM FUND RAISING

An alumni-faculty-student fund raising committee was established two years ago to seek foundation, government, and other funds for the Tutorial Program and for scholarships and loans for special admissions students. A scholarship/loan fund has been established to supplement the financial aid awards of students for whom there is determined to be an educational need which enhances their already determined financial need. For example, an attempt is made to replace the work-study grants of some students with grant or loan funds so as to allow the students a greater amount of time for study.

The scholarship/loan fund is administered by the Law School Tutorial Committee, which works in conjunction with the University's Financial Aid Office. The available funds are at this time very low, but the fund raising effort is continuing. Because USF is a private university which must charge tuition, the financial needs of the special admissions students can often be the single most determinative factor in their academic performance.

The funds for the operation of the Tutorial Program are allocated from the general law school budget, but here too there is a vigorous attempt by the fund raising committee to find outside funds. While the law school is committed to the program and supportive of its goals, outside funding would be helpful in allowing the program to continue and to expand.

CONCLUSION

The experience at USF has demonstrated that a program of looking beyond traditional admissions criteria, in order to make a law school education available to a wider segment of the population, can succeed. The minority and disadvantaged students who have traditionally been excluded from law schools can do well in the study of law and can become excellent attorneys if law schools are willing to consider their needs carefully and provide the types of teaching approaches and supportive mechanisms that can lead to success.

Of course some students will not make it through law school, and for the specially admitted students the percentages will be higher than for the regularly admitted students. But large numbers of minority and disadvantaged students are succeeding, and some are doing exceptionally well in law school. There is always some risk involved in new approaches, but the rewards of success will be great.

VIII

A MODEL BAR REVIEW PROGRAM

A. INTRODUCTION

The Minority Legal Educational Resource's Summer Bar Review Program is a supplementary bar review course offered in Chicago on Northwestern Law School premises.[1] Although incorporated in 1977 as a nonprofit organization, the Program began operation in 1975. In 1975, the Program was offered to ten graduates of Harvard, DePaul, and Northwestern Law Schools; the goal of the Program was to assist the participants in studying for and writing the Illinois Bar Examination. In 1976, the same program was offered to eleven graduates of Howard, Northwestern, and the University of Chicago Law Schools. In 1975 and 1976, the respective successes of the Program were seven out of ten and eight out of eleven passing the Bar Examination on the first attempt, with the remaining candidates passing the second time.

Due to the initial success of the Program, as compared to the normally dismal passage rate of minority Bar candidates in Illinois of approximately 24 percent, the Program was substantially expanded in 1977 through the contributions of the Cook County Bar Association and several individuals. Thus, in 1977 twenty-nine people completed the course with an accompanying Bar passage rate of twenty-three or 79.3 percent. In 1978, the Program expanded to include all minority law graduates taking the Illinois Bar for the first time who wished to participate in the Program. In that same year, the Program was also offered to repeating Bar candidates on the basis of available space. The passage rate for first-time minority participants for the July 1978 Bar Examination was 50 percent, while in July 1979 the passage rate was 60 percent for first-time participants in the Program.

This bar review program is a voluntary effort which has flourished due to the devotion of volunteer minority attorneys in private, governmental, and corporate practice in Chicago who teach the courses. Increasingly, volunteers are attorneys who participated in the Program as students. Since the Program is designed to be supplementary in nature to the commercial review courses offered in Illinois, instructors principally teach methods of study and examination-taking rather than substantive material. The Program stresses the development of study and examination skills and involves extensive advice to the student on management of his or her life prior to and during the two-day examination.

B. PROGRAM ORGANIZATION

The Minority Legal Educational Resource's Summer Bar Review Program is structured to meet once a week at seven o'clock in the evening for three hours. There are also Saturdays devoted to Multi-State Bar Examination practice and techniques. For the evening sessions students are divided into small groups of

1. E. Laverne Jones and Ronald E. Kennedy, "Teaching Materials for Minority Legal Educational Resource's Summer Bar Review Program," mimeographed (Chicago: Minority Legal Educational Resources, June and July, 1978), pp. 1-16.

approximately ten to twelve with one volunteer instructor and two assistants per group. Although the program director has the responsibility of preparing the weekly examinations administered to the student participants and monitoring the work of each instructor, the instructors and their assistants are charged with reviewing the examinations from the previous week and providing individual tutorials to students with particular difficulties. After the first week, when the entire group meets jointly for Program orientation, students meet weekly for one hour in groups for examination review and individual assistance on examination-writing and study skills.

During the second and third hours of each weekly session, an examination is administered in a situation simulating that of the actual Bar. Students are tested generally on substantive areas which correspond to those being presented in the commercial bar course. After each practice examination, the individual instructors are responsible for assuring that the examinations are graded and returned to the students for discussion at the subsequent weekly meeting.

In some of the weekly examinations, however, a question will be utilized which encompasses material not yet reviewed in the commercial course. The objective of this exercise is: (1) to prepare students to expect the possibility of being examined on an area of law which was not stressed in the cram course and (2) to draw on their law school knowledge in that area of law to formulate a well-thought out, well-organized answer which, even if it does not receive full credit, will earn partial credit.

Examination techniques which are stressed during the Program include attendance at all commercial cram classes and Program sessions, note-taking techniques during the commercial lectures, reviewing and analyzing material soon after the lecture, and active rather than passive studying. One problem which the Minority Legal Educational Resource's Summer Bar Review Program has isolated as being particularly germane to minority students who do not pass the Bar is that they tend to be "passive studiers"; this term connotes a student who reads materials or listens to lectures without really thinking about them. Thus, participants are encouraged to attempt to comprehend the material initially and not postpone mastery. Suggested methods for mastery include answering the questions in the cram course volumes, outlining difficult concepts, and explaining concepts out loud to oneself or to a friend.

Instructors in the Program also advise students with respect to study places, the number of hours per day they should study, and suggested time segments for studying. Students are encouraged to study, work, and attend classes for ten to fourteen hours per day; less time is felt to indicate a lack of full commitment, while more time is viewed as causing a student to "burn out" prior to the actual Bar. Students are advised to study in time segments of forty-five minutes to an hour, and within an overall plan of attack, focus early in their preparations on courses that are especially difficult for them. Despite these general study recommendations, instructors are careful to qualify their suggestions with the advice that students continue approaches which have been successful for them in the past.

To avoid the "burn out" syndrome mentioned above, students are counseled on the proper methods of organizing their study in time stages. The early stage involves cram course attendance, note-taking, and review of materials. The intermediate stage involves increasing the intensity of study, with particular attention to areas of legal weakness, and catching up if the student has fallen behind in either reading or question

review. The final stage corresponds to the week before the examination; this stage involves the second or third review of the cram materials, but more importantly, the writing of exam questions of both the essay and Multi-State variety.

Regarding techniques to improve examination-taking proficiency, students are instructed both on the essay portion of the Illinois Bar and the Multi-State multiple choice part. Students are instructed on the importance of the "essay question format." The format must be used for the examination and it must be second nature by exam time. Under the extreme pressure of the Bar Examination, reliance on the format lessens the time wasted in organizing an answer and assists the student in framing his or her response so that the student's answer booklet will look "like everyone else's."

Instructors recommend that students answer each essay question by first answering the specific question asked, then stating the issue and rule of law, and finally applying the rule of law to the facts in formulating a conclusion. It is stressed that standard legal terminology should be used. The students are also warned about careful time allocation among essay questions and are given concrete illustrations about the disastrous effect of leaving any question blank or incomplete. Incomplete or omitted answers often doom a student to failure since most candidates who fail the essay portion fail by fewer than sixteen points; at the same time, the omission of two essays constitutes twenty lost points.

Great effort is made to demystify the Multi-State portion of the exam. Students take practice exams and are familiarized with the format and grading of the examination; there are 100 questions extracted from six distinct subject areas and the score is based on the total number of correct answers. Therefore, students are encouraged to guess when they do not know the correct answer rather than leaving a question blank. Furthermore, instructors acquaint students with some of the idiosyncracies of the Multi-State Bar Examination; they are told, for example, that the Multi-State exam tests ability to read as much as anything else. Often there is no "correct" answer to a Multi-State Bar Examination question, but rather a "best" one in terms of the alternatives presented. Instructors offer specific tips on eliminating wrong options and being responsive to the precise questions asked.

The various types of Multi-State questions are broken down and examined to demonstrate the mental processes that must be employed to arrive at a correct response. Various techniques are introduced and their application is discussed once the type of question is identified. For example, some Multi-State questions merely ask for the correct answer to a question regarding how a point of law is to be applied to a factual situation. For this type of question, normal legal analysis is appropriate. Questions asking for the "least best" answer also require legal analysis to determine the best answer and its opposite, which, in fact, is the correct response.

Questions with long factual patterns may require a glance at the questions at the end, so that the reading of the facts is more systematic. Unnecessary facts can be glossed over since the student has an idea of those which will be important in answering the particular question. In sum, the result of systematizing a student's approach to the Multi-State section is to refine guessing and increase the probability that the answer selected will be correct.

The remaining emphasis, and certainly a major focus of the Program, centers on practical advice for coping personally with the difficult preexamination period. Instructors advise the Bar candidates on

basic health care, nutrition, exercise, and, foremost, on avoiding or postponing emotional stresses during the pre-Bar weeks, whether related to marriage, work, or other personal problems.

As Professor Ron Kennedy, original Director of the Program, stated to the Committee of Bar Examiners of California on October 15, 1979, the Minority Legal Educational Resource's Summer Bar Review Program is in great part a technique course.[2] Yet Professor Kennedy was careful to stress that technique cannot be isolated from psychological impact, especially in the case of minority students who have been programmed, both by statistics and peers, during law school to dread the Bar and doubt their chances of first-time passage.

The value of the psychological and emotional support cannot be overemphasized. Minority instructors who have successfully overcome the hurdle of the Bar can give more credible advice on exam-taking techniques, often because they can relate to the fears, apprehensions, and feelings of inadequacy that many of the students experience.

C. CONCLUSION

Although there would appear to be nothing extraordinarily innovative about the Illinois Bar Review Program as organized by Professor Kennedy, the results are indisputably noteworthy: since 1975, under the aegis of this Program, minority Bar passage rates have risen from under 25 percent to a high of 79 percent to a current rate of approximately 60 percent. Indeed, the Committee of Bar Examiners of the State of California has consulted with Professor Kennedy and is contemplating the feasibility of initiating a similar program in California.[3]

It is, of course, not possible to offer an exact formula which will assure other states the same notable increases in minority Bar passage rates which the Program has achieved. Possibly the success of the Program is due to a unique confluence of factors: devoted and highly competent minority attorneys and law professors, a belief in the potential for success of the program participants, relevant psychological as well as emotional support, concrete suggestions for studying, and writing and exam-taking techniques. Certainly, the example which the Minority Legal Educational Resource's Summer Bar Review Program has set for Illinois deserves the serious attention and consideration of other jurisdictions.

2 Meeting on 15 October 1979 at the Office of the State Bar of California as sponsored by the Committee of Bar Examiners.

3 Ibid.

IX.

POLICY RECOMMENDATIONS

The recommendations which follow derive from our research during the past twelve months as detailed in the final report. MALDEF encourages implementation of these recommendations which are offered within the context of constitutional, psychometric, sociological, and demographic considerations.

1. Increased Access of Minorities to Law School.

Individual institutional discretion should be used to increase minority enrollment in law schools wherever possible; such voluntary action is consistent with the *Bakke* decision and the HEW "Nondiscrimination Policy Interpretation" of Title VI in light of *Bakke*.

2. Test-Piloting of Models.

The models presented in Section VI, *supra*, of the report should be seriously reviewed and test-piloted by ABA-approved law schools to permit fine adjustments and revisions of the alternative criteria prior to full implementation.

3. Independent Analysis Agency.

An agency, independent of the law school community, is needed to collect and analyze data related to law school admissions and to make policy recommendations.

4. ABA Support of Affirmative Action.

Law faculty, students, and the schools themselves should provide support for the passage of the American Bar Association's proposed New Standard 212 which is important for increasing the numbers of minority students in law school. ABA New Standard 212, in essence, mandates that ABA law schools undertake affirmative action to increase minority access to law school and specifies some of the affirmative steps which may be taken. We support the passage of ABA New Standard 212 as set forth on 1 December 1979 in the "Intention to Adopt" resolution of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association.

5. Guidelines on Test Use.

Law schools should conduct admissions in strict compliance with the Law School Admission Council's "Cautionary Policies Concerning the Use of the LSAT." Bar associations and national legal organizations should be encouraged to oversee compliance with published guidelines on correct LSAT usage.

6. Latest Research on Standardized Tests.

Careful attention should be paid to new research on standardized tests. One example is the study sponsored by the National Conference of Black Lawyers to investigate possible inherent bias in the LSAT.

7. The Effect of Coaching Schools.

A follow-up to the Federal Trade Commission study on the effect of coaching schools on LSAT score improvement should be undertaken with the intent of corroborating or disproving the gains in test scores which the original study indicated.

8. Truth-in-Testing Legislation.

Test data released as a result of the enactment of the New York Truth-in-Testing legislation should be analyzed with a view toward revision of existing admissions criteria.

9. Student Role in Admissions.

Students, particularly those from racial/ethnic minority backgrounds, should be permitted to play an expanded role in applicant evaluations for admission.

10. Adequate Funding for Admissions.

Law schools should expand their fiscal commitment to the admissions process; such commitment would include increasing the staff of admissions personnel, evaluating all candidates on factors beyond their cognitive indices, increasing recruitment efforts for minority applicants, and providing applicant interviews. The national law school community needs to set specific goals, including timetables, and allocate financial resources for recruitment of students from minority backgrounds.

11. Supportive Service Programs.

Supportive and tutorial programs modeled on those described in the report should be instituted at each law school to assist minority and disadvantaged admittees with their initial law school experience. Individual schools and state bars are encouraged to study the minority bar passage program established in Illinois with thought toward modeling similar programs to assist minority bar candidates in their own states.

12. Joint B.A.-J.D. Programs.

Serious attention is needed for formulation of innovative combined undergraduate-law school programs aimed at creating a larger pool of minority candidates for legal studies.

13. Meetings to Effectuate Admissions Policy Decisions.

As a follow-up to this report, regional meetings of law school deans, professors, bar members, law school association representatives, researchers, and legislative policy makers need to be held on the subject of increased access for minorities to law school.

APPENDIX

INTRODUCTION TO QUESTIONNAIRE

Directions—The questions that follow are presented in one of *three* formats:

1. Yes or no questions which may be answered by checking the appropriate response.
2. Lists of alternatives to which the respondent is to check all responses applicable to his or her law school.
3. Questions which solicit a short answer, data, or a policy statement.

Please do not hesitate to continue your answers on additional pages if the space provided is inadequate. We welcome any additional and more detailed information you may care to provide in response to this questionnaire.

Definitions—For the purposes of this questionnaire, the meaning of these phrases is limited as follows:

- "special" admissions: refers to any admissions process by which minority or other persons are evaluated and admitted pursuant to criteria other than the regular admissions criteria of the law school.
- "special" admittee: a minority or other person accepted to study law pursuant to the "special" admissions process.
- "special" applicant: a minority or other person whose application for admissions is evaluated pursuant to the "special" admissions process, either by self-selection or by a determination of the law school.
- diversity: refers to any student, admissions model or applicant characteristic, based, in whole or in part, on the guidelines set forth by Justice Powell in *Bakke* which the law school evalutes to reach an admissions decision.

LAW SCHOOL ADMISSIONS STUDY

QUESTIONNAIRE

LAW SCHOOL ADMISSIONS STUDY

I. Admissions Committee

1. How many admissions committees do you currently have? _____

2. How many members of your current admissions committee(s) belong to each of these categories?

	Committee 1	Committee 2	Others
law school faculty			
law school administrators			
law students			
other (please specify affiliation: _____)			
total			

3. If there are different admissions committees, please describe the functions of each:

4. If there are different admissions committees, do the committees serve in an advisory capacity to a single committee which is ultimately responsible for decisions or not? Please explain who has final decision-making authority:

5. Who selects the admissions committee(s)?

	Committee 1	Committee 2	Others
the dean			
faculty committee(s)			
other (please specify):			

6. How often is (are) the admissions committee(s) constituted?

	Committee 1	Committee 2	Others
annually			
every 2 or 3 years			
every 4 or 5 years			
other (please specify):			

7. Is unanimous admissions committee approval required for an applicant to be offered acceptance?

yes_____ no_____

If no, please explain:

8. Does each member of the admissions committee(s) have an equal vote?

yes_____ no_____
If no, please explain:

9. Please explain the procedure for resolving tie-votes and/or lack of unanimity in admissions decisions:

II. Applicant Review Process

10. Do you use a specific predictive index, as calculated by the LSAC, to evaluate law school applicants?

yes_____ no_____
If yes, please state the formula, including the specific LSAT/GPA percentage weight allocation:

11. When is a candidate's GPA/LSAT index evaluated?

during the initial review of the file_____
Other (please specify when):

12. Do you automatically reject applicants with LSAT scores below a specified minimum?

no absolute minimum score is used _____
yes and the minimum score is the same for all _____
(please specify score):_____
yes, the minimum score for different groups of applicants is
(please list groups and minimum scores):

	Minimum Score
regular applicants	
"special" applicants	
other (please specify):	
_____	

13. Before the U.S. Supreme Court decision in Bakke, did you use separate review committees for regular and "special" applicants?

yes, formally separated reviews/committees _____
yes, informally separated reviews/committees _____
no, one committee reviewed all applicants _____

14. Do you currently use separate review committees for regular and "special" applicants?

yes, formally separated reviews/committees _____
yes, informally separated reviews/committees _____
no, one committee reviews all applicants _____

15. Please check any of the following characteristics that enter into your admissions decisions:

_____race
_____ethnicity
_____rurality
_____sex
_____handicap
_____age
_____religion
_____bilingualism
_____geographical location
_____socioeconomic status
_____parental education
_____parents or relatives alumni
_____parents or relatives donors
_____demonstrated community service
_____demonstrated leadership
_____segregated housing (de jure or de facto)
_____segregated schooling (de jure or de facto)
_____employment during college
_____employment after college
_____others (please specify):_____
_____
_____none

16. What percent of your applicants are evaluated on any of the criteria listed in #15? _____

17. Do you have any "automatic" or "administrative" admissions based on applicants' GPA/LSAT index?

yes_____ no_____
If yes, please define what for your school is an "automatic" or "administrative" admit.

If yes, what percentage of your entering class is admitted automatically? _____

18. Do you have a discretionary admissions policy that evaluates more than GPA/LSAT index for "special" or diversity applicants?

yes_____ no_____
If yes, what percentage of your entering class is admitted this way? _____

19. What percent of your applicants are interviewed?

regular applicants _____
"special" applicants _____
none (if none, please explain):

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III. Recruitment and Supportive Programs

20. What is your total annual law school budget? _____

21. What is your total annual recruitment budget (include any funds specifically earmarked for "special" recruitment)? _____

22. What percentage, if any, of #21 is specifically earmarked for "special" recruitment? _____

23. Please check any item that accurately describes your recruitment program:

separate recruitment programs for regular and 'special" applicants _____
unified recruitment program for all applicants _____
minority students significantly influencing your recruitment policy _____
minority students actively involved in recruitment _____

24. Do you currently offer academic supportive programs for students (e.g. tutorial, etc.)?

yes, for all students _____
yes, but only for "special" students _____
no (if no, please omit questions 25, 26, 27, 28) _____

25. Is student participation in the supportive programs voluntary?

yes _____ no _____

26. Who (name and title) directs your supportive programs?

name _____

title _____

27. Please check any statements that apply to your school's supportive (e.g. tutorial, etc.) programs:

student tutors _____
faculty tutors _____
study skills taught _____
test taking skills taught _____
others (please specify): _____

28. Please explain briefly the structure and implementation of your supportive programs, including, but not limited to, substantive content, materials provided, hours per week, instructors, numbers of students per group, etc.:

29. Do you have funds reserved for "special" students requiring financial assistance?

yes _____ no _____
If yes, how much? _____

LAW SCHOOL ADMISSIONS STUDY

IV. Admissions Data

30. Please complete the table, on the following page, of student enrollment (including first- and second- and third-year students) by year and racial/ethnic group:

	Black	Hispanic	Asian American	Other Minority (Please Specify): _____	Total Minority	Grand Total (Non-minority and Minority)
1970-71						
1971-72						
1972-73						
1973-74						
1974-75						
1975-76						
1976-77						
1977-78						
1978-79						
1979-80*						

*Please include enrollees or admittees who have indicated they will attend.

31. Please complete the following table on third year racial/ethnic minority students:

	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77	1977-78	1978-79
number of third year minority students enrolled									
number of minority students who graduated									
number of minority graduates who passed California Bar on first attempt									
number of minority graduates who passed California Bar on second attempt									

32. On the average, what relative weights (percentages) were assigned to each of following factors in your admissions decisions for these years?

	"Special" Admittees			
	LSAT	GPA	Criteria Such as Listed in #15	Other (please describe): _____
1978-79				
1977-78				
1976-77				
1975-76				
1974-75				
1973-74				
1972-73				
1971-72				
1970-71				
1965-66				
1960-61				

(Question 32 continued...)

Regular Admittees

	LSAT	GPA	Criteria Such as Listed in #15	Other (please describe): _____
1978-79				
1977-78				
1976-77				
1975-76				
1974-75				
1973-74				
1972-73				
1971-72				
1970-71				
1965-66				
1960-61				

33. Please state for the following years the ratio of candidates admitted to those seeking admission (i.e. 100 out of 500):

"Special" Admittees

1978-79	_____	out of	_____
1977-78	_____	out of	_____
1976-77	_____	out of	_____
1975-76	_____	out of	_____
1974-75	_____	out of	_____
1973-74	_____	out of	_____
1972-73	_____	out of	_____
1971-72	_____	out of	_____
1970-71	_____	out of	_____
1965-66	_____	out of	_____
1960-61	_____	out of	_____

Regular Admittees

1978-79	_____	out of	_____
1977-78	_____	out of	_____
1976-77	_____	out of	_____
1975-76	_____	out of	_____
1974-75	_____	out of	_____
1973-74	_____	out of	_____
1972-73	_____	out of	_____
1971-72	_____	out of	_____
1970-71	_____	out of	_____
1965-66	_____	out of	_____
1960-61	_____	out of	_____

34. What were the median and, if available, mean LSAT scores and ranges of LSAT scores at your school for the following entering classes:

	regular enrollees	"special" enrollees*
1978-79		
Median		
Mean		
Range (highest/lowest)		
1977-78		
Median		
Mean		
Range (highest/lowest)		

(Question 34 continued...)

1976-77
Median
Mean
Range (highest/lowest) _____ _____

1975-76
Median
Mean
Range (highest/lowest) _____

1970-71
Median
Mean
Range (highest/lowest) _____

1965-66
Median
Mean
Range (highest/lowest) _____ _____

1960-61
Median
Mean
Range (highest/lowest) _____

*Excluding racial and/or ethnic minorities admitted under regular criteria.

V. Policy Considerations

35. Please state the specific institutional objectives that are reflected by your law school's admissions policy:

36. Are these institutional objectives published somewhere?

yes_____ no_____
If yes, please state where:

37. To ensure due process in admissions, please state if you employ any of the following or variations thereof:

-an appeal procedure for rejected applicants _____
-publication and disclosure to applicants of all factors evaluated in the admissions process _____
-internal checks and balances on voting by admissions committee members, such as requiring all or a majority of committee members to agree on any candidate for admission or evaluation of each candidate by several different committees _____
-external audits, such as limited public inspection of letters of recommendation or other admissions documents _____
-others (please specify):

VI. Admissions Plan Subsequent to U.S. Supreme Court Decision in Bakke

38. Please check any changes in your admissions policy since the Bakke decision:

-established separate admissions committees or procedures for regular and "special" applicants _____
-eliminated separate admissions committees or procedures for regular and "special" applicants _____
-changed the weights assigned to GPA's and LSAT's for regular applicants _____
-changed the weights assigned to GPA's and LSAT's for "special" applicants _____
-considered "diversity" information (e.g., race, sex, age, parental education, etc.) in admissions decisions _____
-eliminated "diversity" information from admissions decisions _____
-others (please specify):

39. Please explain in the space provided any planned revisions in your admissions policy with respect to:

-the weight assigned to GPA or LSAT scores:

-the weight(s) assigned to factors other than GPA and LSAT scores:

-the way "special" applicants are evaluated:

-admissions committees for regular and "special" applicants:

-applicant interviews:

-others (please specify):

40. Please describe your screening and review process, noting any distinction in procedures between regular and "special" applicants:

Optional

41. Have there been any reverse discrimination suits filed against your law school--either before or after the U.S. Supreme Court decision in Bakke?

yes _____ no _____

If yes, please state the name, nature, and status of the suit: